

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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ANDRE JACOBS

Plaintiff

vs.

Civil Action No. 04-1366

PENNSYLVANIA DEPARTMENT OF  
CORRECTIONS, et al

Defendants

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PROCEEDINGS (Day 6)

Transcript of Jury Trial Proceedings, continuing  
Thursday, November 13, 2008, United States District Court,  
Pittsburgh, Pennsylvania, before Honorable Joy Flowers Conti,  
United States District Judge.

APPEARANCES:

For the Plaintiff: ANDRE JACOBS, Pro Se

For the Defendant: SCOTT BRADLEY, Esquire  
ROBERT WILLIG, Esquire

Reported by: Virginia S. Pease  
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Proceedings recorded by mechanical stenography. Transcript  
produced by computer-aided transcription.

1 (Whereupon, court reconvened at 9:30 a.m.)

2 THE COURT: Please be seated.

3 I believe Lieutenant --

4 MR. BRADLEY: -- Giddens, Your Honor.

5 THE COURT: If you could please come forward and  
6 retake the witness stand.

7 The witness is instructed that you remain under  
8 oath.

9 MR. BRADLEY: Yes, ma'am.

10 \* \* \* \* \*

11 GREGORY GIDDENS, a witness herein, having  
12 been previously duly sworn, testified further as follows:

13 CROSS EXAMINATION CONTINUES

14 BY MR. JACOBS:

15 Q. Good morning, Mr. Giddens.

16 A. Good morning.

17 Q. If I recall your testimony the other day correctly, you  
18 were testifying about promotions that you received in the  
19 course of your DOC employment.

20 A. Just the progression of my employment, yes.

21 Q. Are you familiar with your Code of Ethics?

22 A. I know that it exists.

23 Q. Are you familiar with it?

24 A. Ah, not in the whole, no.

25 Q. How long have you said you worked with the Department

1 of Corrections?

2 A. 18 years.

3 Q. And over those 18 years, how many times have you  
4 reviewed your Code of Ethics?

5 A. Many, in limited portions.

6 Q. And it is also your duty as a Department of Corrections  
7 employee to know your Code of Ethics; correct?

8 A. It's my duty as an employee of the Bureau of  
9 Corrections to know all policy and procedure.

10 Q. I'm talking about your Code of Ethics.

11 A. All policy and procedure.

12 Q. Specifically, Code of Ethics.

13 A. Specifically ~~mall~~ policy and procedure.

14 Q. All right. Is it your duty as a DOC employee to know  
15 the Code of Ethics; yes, or, no?

16 A. It is my duty to --

17 Q. Yes, or, no.

18 A. No. The Code of Ethics is available for review, when  
19 needed.

20 MR. JACOBS: Your Honor, Your Honor --

21 THE COURT: You need to answer the question as  
22 asked. You can answer, yes, or, no.

23 BY MR. JACOBS:

24 Q. Are you familiar with the section of the Code of Ethics  
25 which states that you're supposed to avoid situations where

1 bias or prejudice might interfere with your decision-making?

2 A. I am not.

3 Q. Are you familiar with the section of the Code of Ethics  
4 which states that you are not to enter any type of false or  
5 inaccurate information on official documents?

6 A. I am.

7 Q. Mr. Giddens, I'm showing to you what's been marked as  
8 Plaintiff's Exhibit No. 25.

9 A. Okay.

10 Q. Do you recognize this document?

11 A. I do.

12 Q. I'm going to draw your attention to No. 7.

13 A. Okay.

14 Q. You see your answer?

15 A. I do.

16 Q. Did you understand the question?

17 A. Clearly.

18 Q. Didn't you testify yesterday that you went, you went  
19 through the documents?

20 A. No, not yesterday.

21 Q. Well, I mean, the other day. Did you testify that you  
22 went through those documents?

23 A. I don't recall. We would have to look at the record.  
24 I can't answer, yes, or no.

25 Q. It was just a few days ago.

1 A. I don't recall that question. I can't say. I reviewed  
2 some of the documents for this proceeding, yes, if that's what  
3 you're asking.

4 Q. Did you review the documents that Defendant Chirico  
5 took from Mr. Lyons on September 15<sup>th</sup>, 2003?

6 A. I did not.

7 Q. You never looked at them?

8 A. Back then, yes, I'm sure I looked at them. Yes.

9 Q. Okay. And by looking at them, you became at least  
10 familiar with the documents, the nature of the documents?

11 A. I may have at that time, yes. That was five years ago,  
12 so I can't tell you what those documents were today, and those  
13 documents are unavailable for my review today.

14 Q. Because they were destroyed; right?

15 A. I have no idea where they are or what happened to them.

16 Q. You took no steps to secure them?

17 A. I took the steps that I'm required to take by procedure  
18 and policy.

19 Q. You participated, you participated, at least in some  
20 part, in both seizures of documents, September 15<sup>th</sup> and  
21 September 16<sup>th</sup>?

22 A. I'd say, yes.

23 Q. Okay. I'm showing you what's been marked as  
24 Plaintiff's Exhibit No. 2.

25 A. Okay.

1 Q. You recognize the document?

2 A. Yes.

3 Q. That's the statement that you wrote?

4 A. That is correct.

5 Q. Is that an -- is that an accurate statement?

6 A. I believe I've previously testified that at the time --

7 Q. I'm asking you, yes, or, no; yes, or, no?

8 A. At the time I wrote it --

9 Q. Yes, or, no? Yes, or, no?

10 THE COURT: Just a second.

11 Repeat the question. Repeat the question. If you  
12 can answer the question, yes, or, no, you need to do so.

13 If you want to have a further explanation, your  
14 counsel will be able to bring that out on the redirect.

15 THE WITNESS: Okay.

16 THE COURT: Okay? Repeat the question, please.

17 BY MR. JACOBS:

18 Q. Is that an accurate statement?

19 A. As of today, no.

20 Q. You testified that in pursuit of the investigation of  
21 this particular grievance number, that you reviewed the only  
22 misconduct or document that you could find that related to  
23 seizures of documents. Remember that testimony?

24 A. Issued to you, yes.

25 Q. And I'm referring to -- I'm showing you what's been

1 marked as Plaintiff's Exhibit No. 7-A.

2 A. Okay.

3 Q. Do you agree with me that nowhere in that document is  
4 Mr. Lyons' name mentioned?

5 A. Okay.

6 Q. Do you agree with me?

7 A. Yes.

8 Q. And that it is impossible that you looked at that  
9 document and came out with Mr. Lyons' name?

10 A. No, I wouldn't agree with that, obviously.

11 Q. Based on this document right here --

12 A. No. no, I wouldn't agree with that. Obviously, I  
13 looked at that document in response to the previous exhibit,  
14 because that is the genesis of my response, is that document.

15 Q. But it had nothing to do with a seizure of documents  
16 from Mr. Lyons; correct?

17 A. Then I must have overlooked that particular part of  
18 your grievance.

19 Q. Yes, or, no?

20 A. I must have overlooked it.

21 Q. Just looking at this document right here, that has  
22 nothing to do with the seizure of documents from Mr. Lyons;  
23 correct?

24 A. No; that is correct.

25 Q. And that has nothing to do with Defendant Cherico

1 seizing documents at all?

2 A. That is correct.

3 Q. Nor does it have anything to do with Mr. Lyons being in  
4 the law library?

5 A. Well, it didn't go into that, so that --

6 Q. This document reflects a cell search that took place on  
7 September 16<sup>th</sup> in my cell; correct?

8 A. Correct. And that's how I responded to the grievance.

9 Q. Okay. I'm showing you what's marked as Plaintiff's  
10 Exhibit No. 1.

11 A. Okay.

12 Q. This document involves the documents that were taken  
13 from Mr. Lyons on September 15<sup>th</sup>, 2003; correct?

14 A. I concur.

15 Q. And you testified that there was or there wasn't  
16 disposition taken as to these particular documents?

17 A. I can't tell you. You would have to check the record.

18 Q. Well, Mr. Lyons testified that he never had a  
19 misconduct hearing.

20 A. Yes, I do recall that.

21 Q. And you wrote in response to this grievance that  
22 disposition was taken as to these particular documents.

23 A. No. In my response, I wrote the disposition was taken  
24 on the two documents.

25 Q. But this grievance don't have nothing to do with two

1 documents; correct?

2 A. However, that was what my response spoke to.

3 Q. This grievance doesn't have nothing to do with two  
4 documents being taken; is that correct?

5 A. That's correct. That's why I said you fabricated the  
6 response.

7 Q. This grievance doesn't have anything to do with a  
8 misconduct being issued to me; does it?

9 A. I would agree.

10 Q. And this document doesn't have anything to do with two  
11 pages of documents being taken from me that belong to  
12 Mr. Banks?

13 A. I would agree.

14 Q. So, your response is fabricated?

15 A. Negative.

16 Q. And basically what you tried to do --

17 A. Absolutely not.

18 Q. Okay; absolutely not.

19 Basically what you tried to do was mix one incident up  
20 from the day before with the one that happened the day after  
21 that?

22 A. Absolutely not.

23 Q. And you knew when you responded to that grievance that  
24 this grievance didn't have nothing to do with Gary Banks?

25 A. Absolutely not.

1 Q. And you knew it didn't have nothing to do with two  
2 pages of legal documents taken from Mr. Lyons, that  
3 disposition was taken on 9/24, 2003?

4 A. It's an official document. Absolutely not.

5 Q. You knew that no disposition was taken as to these  
6 documents?

7 A. Absolutely not.

8 Q. Because you had the record. You had access to those  
9 records; didn't you?

10 A. Absolutely not.

11 Q. You didn't have access to the records?

12 A. Obviously not.

13 Q. You had access to the records as to whether or not  
14 disposition was taken; didn't you?

15 A. Absolutely not; otherwise, I would have found those  
16 records.

17 Q. You're the Lieutenant; correct?

18 A. Yes.

19 Q. You don't have access to documents?

20 A. I obviously didn't at that time.

21 Q. Who had them?

22 A. I couldn't tell you.

23 Q. Did they exist?

24 A. I couldn't tell you.

25 Q. Were they destroyed?

1 A. I couldn't tell you.

2 Q. Something happened to them.

3 A. That's your position.

4 Q. You also testified that informal resolutions are not  
5 processed in the same way that normal misconducts are  
6 processed. You remember that testimony.

7 A. Right. The difference in the two are formal and  
8 informal. There's a difference in the way they are processed.

9 Q. Okay. What is the difference in the process?

10 A. A formal resolution is processed through a shift  
11 commander input and sent before the hearing examiner.

12 And informal resolution, although it is annotated on  
13 the main frame system, is not reviewable via DOC.net.

14 In any research of misconducts, I look at DOC.net. And  
15 if there's no record of the misconduct on DOC.net, then, I  
16 assume that there's no record of the misconduct.

17 I did not have authorization or access to research  
18 misconducts via the main frame.

19 Q. Okay. So, how long have you believed that that is the  
20 way informal resolutions are handled?

21 A. I'm not sure I understand your question.

22 Q. How long has that been the process for processing  
23 informal resolutions?

24 A. As long as I've been aware of informal resolution.

25 Q. How long is that?

1 A. Um, I'd say at least nine, ten years, that I'm aware of  
2 it.

3 Q. And the DOC.net you're referring to is the automated  
4 misconduct tracking system; correct?

5 A. Um, I don't know if that's officially what it's called.

6 Q. Well, that's where the normal misconducts are held, in  
7 the automated grievance/misconduct tracking system?

8 A. I can't speak to that. I call it DOC.net, under  
9 misconduct tracking, yes. If it's called automated, yes.

10 Q. Okay. I'm showing you what's been marked as  
11 Plaintiff's Exhibit No. 25 -- oh, 26. Pardon me.

12 Take a moment to familiarize yourself with the  
13 document.

14 A. Okay.

15 Q. You know what that document is?

16 A. I do.

17 Q. Have you taken the opportunity to look at the document?

18 A. I have.

19 Q. And does that document reflect that in the year 2000  
20 the manner in which informal resolution policy was amended?

21 A. It does.

22 Q. And that informal resolutions were processed in the  
23 same manner as regular misconducts?

24 A. It does.

25 Q. And --

1 A. Well, it doesn't -- it just says that the process by  
2 which they are processed. It doesn't say it's the same thing.

3 Q. And it is in an automated system of misconducts and  
4 tracking system?

5 A. It does. But again, I stated previously that there's  
6 the main frame system and DOC.net. So, I can't tell you which  
7 system they are speaking of.

8 Q. Okay, okay. But there is a misconduct -- this is a  
9 system that's available to the DOC; correct?

10 A. Some staff, correct.

11 Q. Okay. And based on your testimony, that to the best of  
12 your memory, informal resolutions were always processed in the  
13 manner in which you described previously; correct?

14 A. Correct, to the best of my knowledge.

15 Q. But this document shows that there was a change in the  
16 manner in which informal resolutions were processed?

17 A. No, I wouldn't agree with that.

18 Q. Well, it was amended?

19 A. Okay. But I don't know what the amendment is.

20 Q. It just says, it tells you what the amendment is.

21 A. To track informal resolutions; correct.

22 Q. Okay. See that?

23 A. Um-hum.

24 Q. Okay. So, at the time in question, you didn't know  
25 that informal resolutions could be tracked?

1 A. No, that's not what I said.

2 Q. No, I'm asking you.

3 A. No, that's not correct.

4 Q. So, you did know that informal resolutions could be  
5 tracked?

6 A. Yes.

7 Q. But you just testified that they are not processed in  
8 the same way as the other misconducts.

9 A. What I testified to is that there are two systems.

10 Q. Okay.

11 A. Both of which are automated. One is specific to  
12 DOC.net and one is the main frame.

13 Q. You said they're processed differently.

14 A. Misconduct goes on both of those systems. So when you  
15 speak of an automated tracking system, you could refer to both  
16 of those system as such.

17 When you review, at least that I recall, when you  
18 review DOC.net, it did not at that time show informal  
19 resolution. That is my testimony.

20 Q. Okay. And you thought that, based on the fact that  
21 they were not processed the same way, you thought that you was  
22 able to bury that informal resolution?

23 A. No.

24 Q. Even though it was documented, it wasn't processed?

25 A. I had nothing to do with the --

1                   THE COURT: Just a second. You can't talk over each  
2 other. So, if you have an objection, you need to bring it to  
3 my attention.

4                   And listen to the question, and then, answer it when  
5 he's done asking. Otherwise, the court reporter cannot  
6 transcribe the record.

7                   THE WITNESS: Yes, Your Honor.

8 BY MR. JACOBS:

9 Q.               Based on your testimony that these informal and formal  
10 were processed in different ways, you believe that you were  
11 able to bury the misconduct that was issued to Mr. Lyons?

12 A.               I had nothing to do with --

13 Q.               Yes, or, no.

14 A.               -- with the informal --

15                   MR. JACOBS: Objection, Your Honor.

16                   THE COURT: Just a second.

17                   MR. JACOBS: Objection.

18                   THE COURT: Are you able to answer the question;  
19 yes, or, no?

20                   THE WITNESS: No.

21 BY MR. JACOBS:

22 Q.               You're not able to answer the question, yes, or, no?

23 A.               I had nothing to do with burying the misconduct; no,  
24 absolutely not.

25 Q.               You had nothing to do with it?

1 A. Nothing to do with any type of burying of any type of  
2 document, for that fact.

3 Q. I'm showing you what's been marked as Plaintiff's  
4 Exhibit No. 27. Draw your attention to Question No. 1.

5 A. Okay.

6 Q. Do you understand that question?

7 A. Clearly.

8 Q. Okay. You see your answer?

9 A. Correct. Consistent with my testimony.

10 Q. That as --

11 MR. JACOBS: Could you show him the date?

12 Q. -- as of September 16<sup>th</sup>, 2006 -- oh, September 14<sup>th</sup>;  
13 you see that?

14 A. Correct. Yes, I do.

15 Q. That was when this response was provided; correct?

16 A. That is correct.

17 Q. And as of that date, you had no current knowledge, nor  
18 could you locate any seized documents for that date?

19 A. That is correct.

20 Q. Three years later.

21 A. Three years later.

22 Q. So, you were still attempting to make it seem like that  
23 wasn't part of the official record?

24 A. How could I attempt that? If it was part of an  
25 official record, how could I make that attempt?

1 Q. Yes, or, no?

2 A. No, absolutely not.

3 Q. You testified that when the prisoners in LTSU go to the  
4 law library, their legal property is searched; correct?

5 A. Their person is searched, to include whatever paperwork  
6 they have on their person.

7 Q. If they take pepper work with them, they are searched?

8 A. Whatever they have with them, including their person,  
9 is searched; correct.

10 Q. On the day in question, would that have been a policy  
11 as well?

12 A. I would suggest, yes.

13 Q. So, when Mr. Lyons was taken to the law library on  
14 September 15<sup>th</sup>, 2003, his legal property in his possession  
15 was searched?

16 A. I would say, yes.

17 Q. And they were returned to him?

18 A. I would say, yes.

19 Q. And upon Mr. Lyons being taken from the law library,  
20 those same legal materials were searched again?

21 A. I can't speak to that. I can't speak to the fact that  
22 they were or were not the same materials.

23 Q. Well, isn't it true that you testified that the unit  
24 staff may take measures to make sure that inmates aren't  
25 passing briefs, cites, and things like that in the law

1 library?

2 A. That is correct.

3 Q. So, the law library is searched prior to the prisoners  
4 being placed in the law library; correct?

5 A. Supposed to be.

6 Q. To make sure things aren't left there for someone else  
7 to come in there and pick up and exchange, like you testified?

8 A. Yes.

9 Q. So, documents that Mr. Lyons went in with, there was  
10 nothing there for him to go in and pick up?

11 A. I can't make that assumption?

12 Q. You don't know if the library was searched?

13 A. Not with definite assurance, no.

14 Q. Okay. So, the law library is not always searched?

15 A. That's not what I stated.

16 Q. I'm asking you.

17 A. It is the policy -- it was the policy of the LTSU at  
18 that time, and SCI Pittsburgh, to search the law library prior  
19 to and after an inmate used it.

20 Q. And you're suggesting that on this particular day it's  
21 possible that it wasn't searched?

22 A. No. I'm suggesting that it's possible that contraband  
23 may have been left in the law library that was missed by the  
24 searching staff.

25 Q. You're suggesting that that may have been the

1 contraband that Mr. Lyons was in possession of?

2 A. I can't know that.

3 Q. Well, are you suggesting the materials that Mr. Lyons  
4 went in the law library with are not the same material that he  
5 came out the law library with?

6 A. I'm suggesting that's a possibility.

7 Q. Okay. And when these materials that he had in his  
8 possession when he came out of law library were taken, were  
9 searched, they were taken?

10 A. Correct.

11 Q. In between that time, Defendant Cherico informed you  
12 after the initial screening that he seen your name in those  
13 documents?

14 A. Not that I recall, no.

15 Q. And you instructed him to take those documents?

16 A. No.

17 Q. And when he came back in, and when he came to take  
18 Mr. Lyons out the law library, that's why the documents were  
19 taken?

20 A. No.

21 Q. That's why they were initially taken?

22 A. If they were the same documents going in as they were  
23 coming out, why wouldn't he have taken them going in; they had  
24 my name on it? If there was concern with my name being on  
25 those documents, why not take them then?

1 Q. So, after he searched the documents, on initial  
2 screening, he seen your name in the documents, he put  
3 Mr. Lyons in the law library, and he came and informed you  
4 that he seen your name in some legal documents?

5 A. Never happened.

6 Q. Okay. Then you instructed him to take the documents?

7 A. Never happened.

8 Q. Then, when he came and took Mr. Lyons out the law  
9 library, he took the documents?

10 A. It never happened.

11 Q. And that's why the documents were never taken on the  
12 initial screening; correct?

13 A. No.

14 Q. Mr. Lyons was taken back to his cell and he asked to  
15 speak to you?

16 A. Um, I don't know. At some point I spoke with him.

17 Q. Did you speak to him on September 15<sup>th</sup>, 2003?

18 A. I can't give you a date. I probably did, as I made  
19 regular rounds on the unit, as you are well aware.

20 Q. But you did have a conversation with Mr. Lyons  
21 concerning those particular documents from September 15<sup>th</sup>,  
22 2003?

23 A. At some point, I did.

24 Q. Did you agree to have a misconduct issued to Mr. Lyons?

25 A. I concurred with the report as written by staff.

1 Q. Did you consider returning the documents to me?

2 A. I had no control over the return of the documents to  
3 you.

4 Q. Did you consider it?

5 A. It never was a thought. I had no control over it. So,  
6 I guess my answer would be, no.

7 Q. You spoke to Mr. Lyons. Mr. Lyons indicated that he  
8 was going to pursue the matter?

9 A. Not that I recall.

10 Q. And then, you come and you search Mr. Lyons' cell on  
11 September 16<sup>th</sup>, 2003?

12 A. I can't say, yes, or, no, to that. If you have a  
13 record that says we did so, then, we did so, but I can't say,  
14 yes, or, no, to that.

15 Q. Well, Mr. Lyons' cell was searched on September <sup>13</sup>,  
16 2003; wasn't it?

17 A. If you have a record that says that. The previous  
18 testimony states that, yes.

19 Q. And in that cell search, you, Defendant Cherico and  
20 Defendant Lynch attempted to retrieve the document, the  
21 misconduct that was issued to Mr. Lyons?

22 A. No.

23 Q. Then, when you didn't find it in his cell, you searched  
24 my cell?

25 A. No.

1 Q. You did search my cell on September 16<sup>th</sup>, 2003?

2 A. If I recall, we searched a pod worth of cells on that  
3 date.

4 Q. Just a second ago you said you didn't remember whether  
5 or not Mr. Lyons cell was searched.

6 A. I don't remember you and Mr. Lyons were in the same  
7 pod. When I recall your cell, you were in a cell in Pod 2 on  
8 the right side, A, or, B, whatever it was; A, I believe, and  
9 you were by the shower. And I didn't remember Mr. Lyons even  
10 being in that pod. So, all of the testimony about you being  
11 in a cell next-door to Mr. Lyons, to me, was, was incorrect  
12 testimony.

13 Q. Well, you all had the records; correct? Department of  
14 Corrections keeps records?

15 A. Somebody has those records, yes.

16 Q. If there was any dispute about what cell we were in,  
17 the Department of Corrections could find out whether or not  
18 that's true; correct?

19 A. You're asking me my recollection.

20 Q. I'm not asking you your recollection. I'm asking you  
21 about the Department of Corrections tracking for the cells and  
22 prison that those prisoners are in.

23 A. That's correct.

24 Q. You all keep records of that?

25 A. They're recorded on the computer; correct.

1 Q. Okay. Now, my cell was searched September 16<sup>th</sup>,  
2 2003; correct?

3 A. If previous record states that, yes.

4 Q. Well, you don't recall this particular cell search in  
5 question?

6 A. I recall the search. I do not recall the date.

7 Q. Okay. And in this cell search you attempted to find  
8 out if I had a misconduct that was issued to Mr. Lyons?

9 A. Not that I recall.

10 Q. In this cell search you permitted Defendant Lynch to go  
11 through all of my legal documents, read my legal documents.

12 A. How could he ascertain if they are legal or not if he  
13 doesn't review them?

14 Q. So, it is the policy of the DOC to read prisoners'  
15 legal documents; correct?

16 A. To review.

17 Q. Review?

18 A. Review. You can't check something if you don't look at  
19 it.

20 Q. Okay. So, you're reading it; right?

21 A. No.

22 Q. Is it the normal policy of the DOC to send legal -- to  
23 send contraband material to the Security Department?

24 A. It was the policy of the LTSU at that time, if there is  
25 a question about the legitimacy of any document.

1 MR. JACOBS: Objection, Your Honor. I object.

2 THE COURT: Okay. Just, if you can answer the  
3 question, yes, or, no, do so. And if you want to have a  
4 fuller explanation, your counsel will be able to follow-up  
5 with you on redirect. Thank you.

6 BY MR. JACOBS:

7 Q. And you agreed to have these materials sent to the  
8 Security Department?

9 A. I'm not sure I understand your question.

10 Q. The documents that were taken from Mr. Lyons on  
11 September 15<sup>th</sup>, 2003 were sent to the Security Department?

12 A. Yes.

13 Q. And you agreed to have those documents sent to the  
14 Security Department?

15 A. It was the policy.

16 Q. Did you agree?

17 A. It was the policy.

18 Q. Did you agree?

19 A. It was out of my hands. It was the policy. It was my  
20 responsibility.

21 Q. Did you participate in it?

22 A. It was the policy. That's my response.

23 Q. Okay. You testified on direct examination, you stated  
24 that after the misconduct that was issued to Mr. Lyons on  
25 September 15<sup>th</sup>, 2003 was issued, it was out of your hands.

1 A. That's correct.

2 Q. The entire matter?

3 A. The, the misconduct goes to the shift commander for  
4 review and signature; processing.

5 Q. Okay. After that particular point, did you participate  
6 in anything having to do with those particular documents after  
7 that.

8 A. Not that I recall.

9 Q. In the normal course of things, would you?

10 A. Um, there are times that I may have been asked  
11 questions about a particular document, or my opinion on them,  
12 and there are times that I weren't. So, it's a 50/50  
13 proposition.

14 Q. Showing you what's been marked as Plaintiff's  
15 Exhibit No. 3.

16 A. Okay.

17 Q. You recognize that document?

18 A. No, not particularly.

19 Q. You don't know what that document is?

20 A. It's a request slip.

21 Q. Okay. That's a form that's used in the Department of  
22 Corrections; correct?

23 A. I recognize the form, if that's your question.

24 Q. Okay.

25 A. Yes.

1 Q. And you agree with me that this particular request  
2 concerns the documents that were taken from Mr. Lyons on  
3 September 15<sup>th</sup>, 2003?

4 A. I do.

5 Q. Do you know Defendant McConnell, Thomas McConnell?

6 A. I do.

7 Q. Did you know him at the time in question?

8 A. I did I.

9 Q. You all friends?

10 A. We were co-workers.

11 Q. Were you all friends?

12 A. No.

13 Q. Can you see the highlighted portion of his response?

14 A. I do.

15 Q. He states that he will review the matter with you?

16 A. Yes.

17 Q. This was after the documents were sent to the Security  
18 Department?

19 A. That is correct.

20 Q. And he stated that if it was appropriate, the documents  
21 would be returned?

22 A. That is correct.

23 Q. After your input?

24 A. That's not what he said.

25 Q. Well, he said --

1 A. That's not what this document here says.

2 Q. He says he will review it with you?

3 A. That's what the document says.

4 Q. For your input.

5 A. It doesn't say, for my input.

6 Q. If he's going to review it with you, wouldn't he want  
7 your input? I mean, I'm just asking you policy.

8 A. You're adding to what the document says.

9 Q. Now, I'm asking you about the policy of the DOC. If  
10 your supervisor calls you about a particular incident and he's  
11 going to inquire about particular documents, he's going to ask  
12 you some questions about your position on the documents;  
13 correct?

14 A. That is correct.

15 Q. Or on a particular situation?

16 A. That is correct.

17 Q. So, he was involving you in the situation, because you  
18 knew about the situation and he wanted your input?

19 A. He questioned me about the document.

20 Q. Oh, he did question you about the documents?

21 A. That's what this says, that he will question me about  
22 the document.

23 Q. He did?

24 A. I don't recall. I don't recall having a conversation  
25 with him.

1 Q. You can't recall if he ever followed up on this?

2 A. I do not.

3 Q. But he did talk to you about the documents; didn't he?

4 A. I just stated I don't recall a conversation.

5 Q. And you persuaded Mr. McConnell not to return the  
6 documents?

7 A. No.

8 Q. Because you didn't like what was in them?

9 A. No.

10 Q. And you also persuaded Mr. McConnell to destroy the  
11 documents?

12 A. No.

13 Q. But the documents no longer exist. You agree with me  
14 about that; right?

15 A. I do not agree with you. I don't know what happened to  
16 them.

17 Q. Well, nobody knows where they are at.

18 A. Okay.

19 Q. Then, they don't exist?

20 A. Not necessarily. They could be in a box somewhere,  
21 wherever.

22 Q. So, if they are in a box, could they be found?

23 A. If every box that is sitting everywhere within  
24 SCI Pittsburgh or SCI Fayette is checked, they possibly could  
25 be found.

1 Q. But my right to access to Courts is not important  
2 enough to conduct that search?

3 MR. BRADLEY: Objection, Your Honor. That's  
4 argumentative.

5 THE COURT: Just a second.

6 MR. JACOBS: I'm asking -- I'll rephrase the  
7 question.

8 THE COURT: Rephrase the question.

9 BY MR. JACOBS:

10 Q. If a prisoner informs you that he needs these documents  
11 for pending litigation, is that important to the Department of  
12 Corrections?

13 A. The policy --

14 Q. Yes, or, no?

15 A. No.

16 Q. That's not important?

17 A. It's not important to me.

18 Q. Okay. Important -- in regards to the seizure of  
19 documents on September 16<sup>th</sup>, 2003, did Defendant Lynch show  
20 you the documents?

21 A. I think I was outside the cell, so, I would say, yes.

22 Q. And you agreed with those documents being taken too;  
23 correct?

24 A. That is correct.

25 Q. Because your name was in them?

1 A. Had nothing to do with my name being in them.

2 Q. But your name was in them?

3 A. I believe so, I believe we reviewed those documents  
4 already during these proceedings.

5 Q. Okay. That was why you agreed to have those documents  
6 taken?

7 A. Absolutely not. They had another inmate's name on  
8 them.

9 Q. And you want to punish me and Mr. Banks for --

10 A. You punished yourself by your presence in the LTSU.

11 Q. You want to the punish me and Mr. Banks, because  
12 Mr. Banks gave me a written statement against you?

13 A. No, sir.

14 Q. And you wanted to discourage me in particular from  
15 exercising my rights?

16 A. You were one of --

17 Q. Yes, or, no?

18 A. No, absolutely not.

19 Q. And that was the practice in the LTSU; correction  
20 officers, including yourself, taking documents, destroying  
21 documents; correct?

22 A. My response to that would be, we're here today, so, you  
23 found a way.

24 Q. Wasn't at this time policy and practice of you,  
25 Defendant Lynch and Defendant Cherico to read prisoners' legal

1 documents?

2 A. No.

3 Q. Search for information that was against your interests?

4 A. No.

5 Q. Or against the interests of the Department of  
6 Corrections?

7 A. No.

8 Q. Take the documents, erroneously label them with  
9 "contraband", and destroy them?

10 A. No, absolutely not.

11 MR. JACOBS: No further questions.

12 REDIRECT EXAMINATION

13 BY MR. BRADLEY:

14 Q. Lieutenant Giddens, just to follow up on that last line  
15 of questions, and specifically in regard to the search of  
16 Mr. Jacobs' cell on September 16<sup>th</sup>, 2003.

17 Do you recall there being other legal documents in  
18 Mr. Jacobs' cell at the time the two pages were removed?

19 A. At least one record center storage box full of  
20 documents.

21 Q. And of course, that box was taken, and confiscated, and  
22 destroyed, and buried and --

23 A. The box remained in his cell after we left it.

24 Q. So, there was an entire other box of legal materials  
25 belonging to Mr. Jacobs that were not taken or removed from

1 his cell at that time?

2 A. Correct. I would say a box of material. What was in  
3 the box, I couldn't speak to. A box he identified as legal  
4 material.

5 Q. And all that was taken on September 16<sup>th</sup> from his  
6 cell were the two pages with another inmate's name on it?

7 A. That is correct.

8 Q. Mr. Jacobs had asked you about conversations you had  
9 with Mr. Lyons after the confiscation of the materials on  
10 September 15<sup>th</sup>, 2003. And there was also testimony from  
11 Mr. Lyons that at some point during those conversations you  
12 told him that you would have been a fool to give those  
13 materials back to Mr. Jacobs, because you were named in some  
14 pending lawsuit or outline of a lawsuit.

15 Did that happen?

16 A. No, sir; absolutely not.

17 Q. How can you be sure that didn't happen?

18 A. I -- first of all, it's already been testified that I  
19 had a sit-down conversation with Mr. Lyons in my office. If I  
20 were to engage in some type of malfeasance with Mr. Lyons,  
21 certainly that type of conversation wouldn't have happened in  
22 that environment. I have no recollection of having any  
23 conversation about being a fool to any inmate; Mr. Lyons or  
24 otherwise.

25 Q. And would it have been your policy or practice at that

1 time to withhold documents from inmates in retaliation for  
2 proposed litigation against you?

3 A. As I've previously testified, it's not who I am and  
4 it's not what I do.

5 Q. Mr. Jacobs had questioned you about the inmate request  
6 form that was submitted to and responded by Captain McConnell.  
7 And just to be clear, did you ever direct that, to anyone,  
8 from Captain McConnell, or anybody else in the Department of  
9 Corrections, did you ever direct that the documents taken from  
10 Eric Lyons be destroyed because your name was in the papers?

11 A. No, sir.

12 Q. With regard to the document that had been up there  
13 indicating that as of September 14<sup>th</sup>, 2003, you couldn't  
14 recall what the document -- whether the documents were the  
15 same or what the result of those were.

16 Do you recall that testimony regarding that document?

17 A. Yes, sir. I believe you're speaking of my grievance  
18 response to his grievance filed.

19 Q. Now, this would have been the written deposition  
20 responses?

21 A. Okay; the interrogatories.

22 MR. BRADLEY: And for the record, that would have  
23 been Plaintiff's Exhibit 27, just so everyone is clear.

24 BY MR. BRADLEY:

25 A. That would have been my answer to Question 1 on that

1 document. Yes, I recall.

2 Q. And September 14<sup>th</sup>, 2006, where were you assigned?

3 A. I believe SCI Fayette.

4 Q. And do you know what the status of SCI Pittsburgh was  
5 at that time?

6 A. It was closed, if I recall correctly. "Moth-balled"  
7 was the official term used.

8 Q. This has been previously marked as Exhibit 2, and I  
9 think we all agree this is the response you provided to  
10 Mr. Jacobs in response to his grievance at No. 63417.

11 Is that correct?

12 A. Yes, sir.

13 Q. I don't know that the word's expressly been used, but  
14 would you agree that what you wrote -- as of today, what you  
15 wrote there was a mistake?

16 A. That is correct. And I previously testified, I  
17 believe, I errored in my response on this document.

18 Q. When you wrote that document, did you believe you were  
19 putting accurate information in that document?

20 A. Without question.

21 Q. Were you attempting to falsify that document when you  
22 wrote it?

23 A. I was not.

24 Q. And that response, was it made as part of an overall  
25 conspiracy with any of the other defendants in this case to

1 bury this incident, or hide the fact that materials were taken  
2 from Mr. Lyons?

3 A. No. And my response to the deposition Question 1 that  
4 has previously been asked was consistent with my response on  
5 that document. I was unable to locate any documents that  
6 refer to what he was asking in his grievance. Therefore, I  
7 had no option but to believe that he was fabricating the  
8 story, and I admonished him for that in my response on this  
9 particular document.

10 Q. And you actually, when you got that grievance to  
11 review, and when you prepared your response, isn't it true  
12 that you -- actually, you didn't just write "denied" on it;  
13 did you?

14 A. I did an investigation. I looked for documents. I  
15 reviewed DOC.net. I reviewed his, what we refer to DC 17-X,  
16 which is his block file, which would have possibly any  
17 pertinent information that I would be able to find misconduct  
18 numbers, too, to use that number to reveal via the computer.  
19 There was nothing related in there to the Lyons' incident. I  
20 can't recall if I looked in Lyons' file or not.

21 But again, because there was no final disposition on  
22 that informal resolution, that document would not have been in  
23 there. So, I had no recourse but to assume that the document  
24 was -- I mean, that his allegations were false. And I  
25 responded in kind to that.

1                   MR. BRADLEY: Thank you, sir. That's all the  
2 questions I have.

3                   RECROSS EXAMINATION

4 BY MR. JACOBS:

5 Q.           I want to draw your attention to the first two  
6 sentences of this particular response. You see that?

7 A.           Okay.

8 Q.           So, at least that portion of my complaint was verified  
9 by you; correct?

10 A.           Okay.

11 Q.           Yes?

12 A.           Okay.

13 Q.           Yes, or, no?

14 A.           Yes.

15 Q.           And it states that a search was conducted of  
16 Inmate Lyons upon completion of law library time?

17 A.           Okay.

18 Q.           Lyons was found in possession of another inmate's  
19 property.

20 A.           Okay.

21 Q.           You said that you did an investigation; correct?

22 A.           Correct.

23 Q.           And you also review documents?

24 A.           Correct.

25 Q.           And you would have had to, have had to review the

1 misconduct report in order to validate that allegation?

2 A. I would suggest that because it was a day later, I'm  
3 assuming that I had some direct recall of the process with  
4 Lyons. That was probably pretty fresh in my mind at that  
5 time.

6 Q. The grievance concerns documents taken from Mr. Lyons;  
7 correct?

8 A. Correct.

9 Q. And you stated that all the prisoners in the LTSU have  
10 a personal file?

11 A. Every inmate in the Department of Corrections has an  
12 inmate file.

13 Q. Okay. So, being as though I stated in the complaint  
14 that the documents were not taken from me, they were taken  
15 from Mr. Lyons.

16 A. Um-hum?

17 Q. Wouldn't that be in Mr. Lyons' file?

18 A. Probably. That's why I suggested I may have reviewed  
19 his file.

20 Q. Wouldn't that be a part of your investigation?

21 A. Probably.

22 Q. And you would have found the document, the misconduct  
23 that was issued to Mr. Lyons on September 15<sup>th</sup>, 2003?

24 A. Not necessarily. It was informal resolution. And I  
25 think we've already reviewed that document, and I had showed

1 that there was no disposition on the document. So, we don't  
2 place it in the file until final disposition, because, then,  
3 it has a few documents, the process it went through and the  
4 final disposition.

5 Q. So you validated my claim that documents were found in  
6 Mr. Lyons' possession?

7 A. In my response; that is correct.

8 Q. So, you knew what incident I was talking about?

9 A. I probably did, yes.

10 Q. And you knew that that wasn't the same incident that  
11 happened from September 16<sup>th</sup>, 2003; you knew that?

12 A. What I knew was that the only confiscated documents I  
13 could find were the two pages. So obviously, I confused at  
14 that time the Lyons' incident, where we were seizing what has  
15 been testified to as 151 pages, with the two pages, the  
16 confiscation slip that I could find on the two pages seized  
17 from you. That, I believe, is where my confusion sat.

18 Q. Okay. And you state that your claim of 151 pages is an  
19 outright fabrication and subject to misconduct for lying.

20 A. That is correct. But I don't recall you being issued a  
21 misconduct.

22 Q. Because I wasn't lying; right?

23 A. In hindsight, you were not.

24 Q. And as far as SCI Pittsburgh being closed  
25 September 14<sup>th</sup>, 2006, when you provided your response to the

1 interrogatories --

2 A. Okay.

3 Q. -- you all don't just leave the documents in the jail;  
4 do you?

5 A. It was moth-balled. There was a security contingency  
6 there. So, I don't know.

7 Q. I'm saying, well, you know, security, you agree that  
8 the Security Department handles a lot of very sensitive  
9 material?

10 A. Correct.

11 Q. Things that are held in the Security Department?

12 A. I would suggest, yes.

13 Q. Including anything labeled "contraband" that is sent to  
14 the Security Department?

15 A. Not necessarily. If the contraband is destroyed, it's  
16 destroyed.

17 Q. I mean, the -- if it's labeled "contraband" and sent to  
18 the Security Department, there's some type of documentation  
19 that --

20 A. You would have to ask someone that worked in the  
21 SCI Pittsburgh Security Office. I can't speak to that.

22 Q. Okay. So, you don't know nothing about --

23 A. I don't know what kind of record-keeping they  
24 maintained at SCI Pittsburgh with reference to the Security  
25 Department.

1 Q. Okay. You we present for the testimony of Mr. Banks?

2 A. Yes.

3 Q. You were present for the testimony of Mr. Lyons?

4 A. Yes.

5 Q. And you also were present for the testimony of  
6 Mr. Edwards?

7 A. Yes.

8 Q. Did you recall the testimony of Mr. Banks that you  
9 retaliated against him?

10 A. I recall when he said he could "fish" and get documents  
11 from one inmate to another, and as long as you didn't get  
12 caught, it was okay. Is that what you're referring to?

13 Q. Do you recall, do you recall his testimony that you  
14 took legal property from him before?

15 A. I remember him saying something like that's what we do,  
16 we take all their property and destroy it, if that's what  
17 you're referring to.

18 Q. Do you recall Mr. Lyons' testimony that legal property  
19 was taken from prisoners on so many occasions that he couldn't  
20 even identify a number?

21 A. No.

22 Q. Do you recall the testimony of Mr. Edwards that you  
23 retaliated against him for attempting to be a witness?

24 A. No.

25 Q. That you intimidated him?

1 A. No. I didn't do that, if that's your question.

2 Q. You didn't do it?

3 A. No.

4 Q. I'm saying, do you recall his testimony to that effect?

5 A. What's referenced to me, no. If he's talking about  
6 Department as a whole, yes. But specifically to me, no, I  
7 don't recall that.

8 Q. Isn't it true that any allegation a prisoner makes  
9 against you, you deny it?

10 A. No.

11 Q. And you know if you deny it, it's going to be supported  
12 all the way up the ladder, through the Department of  
13 Corrections?

14 A. Can I provide you with an example of where that's  
15 incorrect?

16 Q. No. I just want a, yes, or, no.

17 A. Then that -- that's incorrect.

18 Q. You don't care what you put on the document?

19 A. That's incorrect.

20 Q. You testified that Mr. Lyons' statement that you told  
21 him you would have been a fool to return his legal documents  
22 is false?

23 A. That is correct.

24 Q. And Mr. Bank's testimony that his property was being  
25 taken in the LTSU was that false?

1 A. I don't recall Mr. Banks stating that. I recall him  
2 saying that he went in a restriction when his property was  
3 removed, and at some point that property was returned to him,  
4 all of it.

5 Q. You don't recall Mr. Banks' testimony that he's filed  
6 over 300 grievances?

7 A. I do recall that, yes.

8 Q. Were any of those grievances against you?

9 A. I would say, yes.

10 Q. Were any of those grievances reviewed by you?

11 A. I can't speak to that. I know I've responded to Banks'  
12 grievances, but any that were -- that specifically included  
13 me, I don't know.

14 Q. And you denied it?

15 A. Denied what?

16 Q. His grievance.

17 A. I couldn't tell you. If you have a copy of a  
18 grievance.

19 MR. JACOBS: No further questions.

20 MR. BRADLEY: Just one question.

21 REDIRECT EXAMINATION

22 BY MR. BRADLEY:

23 Q. You wanted to provide Mr. Jacobs with an example of one  
24 of the issues you took with him.

25 A. Yes.

1 Q. Can you provide that example, please.

2 A. I had a specific situation with an inmate in the RHU  
3 L-5 unit where a misconduct was issued for destruction of  
4 State property. This would have occurred sometime in 2000,  
5 and -- it would have occurred sometime in about '99. I was  
6 still a sergeant. The inmate was issued a misconduct and  
7 sanctioned by the hearing examiner for the misconduct.

8 Subsequently -- the inmate's name was Willie McKenna;  
9 long-term RHU inmate. Subsequently, I became knowledgeable  
10 that that inmate had, in fact, not committed that misconduct,  
11 and I went through a three- or four-month process to have that  
12 misconduct withdrawn from his record, to include a written  
13 statement that the misconduct was written erroneously on that  
14 inmate, based upon information that we later became  
15 knowledgeable that it was false.

16 And it took a long, tedious process, all the way up to  
17 Central Office. But in the end, the misconduct was withdrawn  
18 from his record. You couldn't do anything about the sanction,  
19 but because he had years of disciplinary custody time, the  
20 sanction was irrelevant any way. But the misconduct was  
21 withdrawn from his record at my behest, because I found out  
22 that we were wrong in issuing that misconduct to that inmate.

23 MR. BRADLEY: No further questions.

24 RECROSS EXAMINATION

25 BY MR. JACOBS:

1 Q. What about all the stuff in my file? I'm making --  
2 fabricating allegations. Did you ever take any steps to have  
3 this stuff removed from my record?

4 A. It's no different than the multiple civil cases you're  
5 filling against me.

6 THE COURT: Do you wish to have that last answer  
7 stricken?

8 BY MR. JACOBS:

9 Q. I'm going to draw your attention to this specific  
10 response right here. Did you take any type of steps to have  
11 this removed from my record?

12 A. At the point which I became aware?

13 Q. Yes, or, no?

14 A. No, I have not.

15 Q. And you know this statement to be false?

16 A. I do at this time, yes.

17 MR. JACOBS: No further questions.

18 MR. BRADLEY: That's all, Your Honor. Thank you.

19 THE COURT: Witness is excused.

20 This might be a good time for our morning recess.

21 Would everyone please rise to excuse the jury (.

22 (Whereupon, jury retires.)

23 THE COURT: We'll be in recess.

24 MR. JACOBS: I have something to raise.

25 THE COURT: Okay.

1                   MR. JACOBS: My witness, Alton Brown, is being  
2 psychologically tortured at SCI Pittsburgh. I believe this is  
3 being used to intimidate him and his testimony in the upcoming  
4 case.

5                   THE COURT: Which case is that; which one?

6                   MR. JACOBS: 04-1592.

7                   THE COURT: Okay.

8                   MR. JACOBS: He being held on a psychiatric ward  
9 around psychiatric patients, and he's not a psychiatric  
10 patient.

11                  MR. WILLIG: The last I heard, Your Honor -- I'll  
12 have to look into it -- that we brought his three witnesses in  
13 1592, we writted them out. And we can't keep them all in  
14 Pittsburgh, because Pittsburgh isn't a maximum security  
15 facility. So, we kept Mr. Brown, Mr. Jacobs at Pittsburgh,  
16 and two others we sent to Fayette, and last I heard, Mr. Brown  
17 was going to be housed in the infirmary, because they couldn't  
18 put him in anywhere else. But I don't know that to be a fact.  
19 I'll have to check into it.

20                  THE COURT: Okay. Please check into it, because we  
21 may not get to that case, in any event. That's a matter of  
22 timing. So, if you could look into that, and then, report  
23 back to me after the break, I would appreciate it.

24                  Anything else?

25                  MR. JACOBS: No, Your Honor.

1                   THE COURT: Okay. Thank you.

2                   (Whereupon, court recessed at 10:55 a.m.)

3                   \* \* \* \* \*

4                   SHARON CONLEY, Deputy Clerk: All rise.

5                   THE COURT: Please be seated. Mr. Bradley, do you  
6 have your next witness?

7                   MR. BRADLEY: Yes, Your Honor. The defendants call  
8 Officer Frank Chirico.

9                   THE COURT: If the witness would please come  
10 forward, and stand an be sworn.

11                  SHARON CONLEY, Deputy Clerk: Please raise your  
12 right hand.

13                  THE WITNESS: I do.

14                  THE COURT: Would you please take the witness stand.

15                  \* \* \* \* \*

16                  FRANK CHIRICO, a witness herein, having  
17 been first duly sworn, testified as follows:

18                  DIRECT EXAMINATION

19                  BY MR. BRADLEY:

20                  Q. Please state your name again, and spell your last name  
21 for the record.

22                  A. Frank Chirico, C-H-I-R-I-C-O.

23                  Q. What is your present occupation?

24                  A. Corrections officer.

25                  Q. Where you currently assigned?

1 A. SCI Pittsburgh.

2 Q. How long have you been a corrections officer?

3 A. A little over seven years.

4 Q. And can you tell the jury how you started your career,  
5 what position you started your career with the Department of  
6 Corrections?

7 A. I started in August, 2001 as a corrections officer  
8 trainee. I was a trainee for a year. I transferred over to  
9 Corrections Officer 1 at Pittsburgh.

10 Q. And have you been at SCI Pittsburgh continuously since  
11 you started with the Department?

12 A. No.

13 Q. Can you explain to the jury what other assignments  
14 you've had?

15 A. I was transferred to State Corrections Institute in  
16 Forest Grove for a while, and then, I returned to Pittsburgh  
17 last year.

18 Q. What was your position where were you assigned in  
19 September of 2003?

20 A. I was in SCI Pittsburgh in the A-300 LTSU.

21 Q. As of September, 2003, how long had you been assigned  
22 to the LTSU?

23 A. I'm not sure of the exact time. Probably six, seven,  
24 eight months.

25 Q. What duties and responsibilities did you have as a

1 Corrections Officer 1 in the LTSU in 2003?

2 A. I was assigned to the 1:00 to 9:00 crew, which we  
3 did -- there was two of us. We did showers Monday, Wednesday  
4 and Friday, property Tuesday and Thursday, and we assisted the  
5 2:00 to 10:00 crew with feeding, any other medical trips, law  
6 library trips.

7 Q. Do you recall coming into contact with Inmate Eric  
8 Lyons on September 15<sup>th</sup>, 2003?

9 A. Yes.

10 Q. Can you explain to the jury how that came about?

11 A. Yeah. Mr. Lyons signed up to go to the A-300 law  
12 library. Myself and Officer Wyza made contact with him in his  
13 cell. I opened the inmate's pie slot. He passed his stuff,  
14 his material he was taking. I passed it off to Officer Wyza  
15 to be searched. I then conducted a strip search of  
16 Inmate Lyons, handcuffed him, and had his door cracked. We  
17 escorted him to the law library, put him in the library,  
18 secured him, gave him his material.

19 Q. And at that time did you leave him in the law library  
20 for a period of time?

21 A. Yes. I think it was two hours.

22 Q. And at the conclusion of his law library time, would  
23 you go back to take him from the law library back to his cell?

24 A. Yes.

25 Q. Is that what you did?

1 A. Yes.

2 Q. Can you explain to the jury what happened in the course  
3 of that process?

4 A. It was pretty much the same thing. He passed his  
5 material out to be searched. I searched it. Officer Wyza  
6 handcuffed him, then, we escorted him back to his cell.

7 Q. During the search, did you discover anything?

8 A. Yes, I found 151 pages of material belonging to  
9 Inmate Jacobs in possession of, you know -- Mr. Lyons had it  
10 in a, I think it was a folder. And I looked through it and I  
11 seen Inmate Jacobs' name on it.

12 Q. Were all 151 pages actual legal documents, or was there  
13 anything else amongst the papers?

14 A. I don't remember at this time.

15 Q. When you saw the information with Mr. Jacobs' name on  
16 it, what did you do; what did you think?

17 A. I asked Inmate Lyons, what was he doing with this  
18 material, and he said he was doing a law -- or legal work for  
19 assisting Inmate Jacobs.

20 I also, I advised him he was in possession of  
21 contraband, because you're not allowed to possess another  
22 inmate's material, and I confiscated it.

23 Q. Do you recall if Mr. Lyons had other legal materials  
24 with him at that time?

25 A. He had his own, own material.

1 Q. So, there was his own material, and there was the  
2 151 pages you identified as Mr. Jacobs' materials?

3 A. Yes.

4 Q. What did you do with Mr. Lyons' materials?

5 A. He retained it. He took it back to his cell.

6 Q. You didn't confiscate those?

7 A. No.

8 Q. You indicated that you informed Mr. Lyons he was in  
9 possession of contraband. And just so we're clear, can you  
10 explain to the jury why you believed that to be contraband at  
11 the time?

12 A. Well, just because it had Inmate Jacobs' name on it.  
13 That's the only reason I thought.

14 Q. And at that time was that considered to be property of  
15 another inmate?

16 A. Yes.

17 Q. And was Mr. Lyons authorized to have that property?

18 A. No.

19 Q. Showing you what's been marked previously as  
20 Plaintiff's Exhibit No. 6.

21 Do you recognize this?

22 A. Yes.

23 Q. What is it?

24 A. It's a misconduct I issued to Inmate Lyons.

25 Q. Your name and signature appear on this document?

1 A. Yes, on the bottom, left-hand corner.

2 Q. That was issued on September 15<sup>th</sup>, 2003?

3 A. Yes.

4 Q. This exhibit contains a second page. Can you identify  
5 that page?

6 A. Yeah. It's the confiscation sheet I issued  
7 Inmate Lyons.

8 Q. Does that indicate 151 pages of legal materials  
9 belonging to Jacobs was taken?

10 A. Yes.

11 Q. And under disposition, what does it say?

12 A. Sent to security.

13 Q. Did you physically take it to security, or did you just  
14 move that process forward?

15 A. I don't remember actually walking it over, but I do  
16 remember it was sent out.

17 Q. Would that have been sent out at about that time,  
18 September 15<sup>th</sup>, 2003?

19 A. It would have been sent out during that shift.

20 Q. Pardon me?

21 A. During that shift, it would have been sent out.

22 Q. When you first took Mr. Lyons out of his cell to take  
23 him to the law library, you indicated that you had passed the  
24 materials to Officer Wyza?

25 A. Yes.

1 Q. Did you search the materials at that time?

2 A. No. Not coming out, no.

3 Q. Did Officer -- did Officer Wyza indicate to you at that  
4 time that Mr. Lyons was in possession of legal materials of  
5 another inmate?

6 A. No.

7 Q. While Mr. Lyons was in the law library, did you go to  
8 Lieutenant Giddens and have any conversations with him about  
9 seeing legal materials from Andre Jacobs that had specifically  
10 Lieutenant Giddens' name on it?

11 A. No.

12 Q. Once you issued the misconduct and the confiscation  
13 slip, did you have any further contact with those papers?

14 A. No.

15 Q. Did you have any conversations with Mr. Lyons or  
16 Mr. Jacobs about those materials?

17 A. No.

18 Q. Did anybody in the course -- after you took the  
19 materials, did anybody tell you to do anything or take any  
20 action because Mr. Jacobs was planning on filing a lawsuit  
21 against various personnel at SCI Pittsburgh?

22 A. No. SCI --

23 Q. At any point thereafter, on September 15<sup>th</sup> or  
24 September 16<sup>th</sup>, did you go to Eric Lyons' cell and search  
25 for the misconduct you had written?

1 A. No.

2 Q. Were you involved in the search of Mr. Jacobs' cell the  
3 next day, September 16<sup>th</sup>, 2003?

4 A. Yes.

5 Q. Tell the jury the -- first off, is it unusual that an  
6 inmate's cell is searched in the LTSU?

7 A. No, it's not unusual at all.

8 Q. Is it a frequent occurrence?

9 A. Yes.

10 Q. Prior to searching Mr. Jacobs' cell on  
11 September 16<sup>th</sup>, 2003, did anybody direct you or tell you  
12 that the reason we're going to do this is because Mr. Jacobs  
13 may be filing a lawsuit against other DOC personnel at SCI  
14 Pittsburgh?

15 A. No.

16 Q. Did anybody tell you you were to look for the  
17 misconduct you had previously written for Mr. Lyons?

18 A. No.

19 Q. Would you tell the jury what you remember about the  
20 search of Mr. Jacobs' cell on September 16<sup>th</sup>, 2003?

21 A. Well, I vaguely remember searching the cell, but as for  
22 my part, I didn't find anything. I just searched half the  
23 cell, the area I was assigned to search, and that was it. I  
24 don't remember what was found or anything.

25 Q. And you, you have no recollection of yourself finding

1 anything that would have required you to bring it to the  
2 attention of your superiors?

3 A. No.

4 Q. There's been testimony generally from other inmates in  
5 the LTSU during this trial. Have you been present for that?

6 A. Yes.

7 Q. Have you ever taken any action with respect to any  
8 inmates in the LTSU because they have filed grievances or  
9 lawsuits?

10 A. No.

11 Q. Did you take any action that we've discussed, or that  
12 we haven't discussed, with regard to Mr. Jacobs, based on the  
13 fact that Mr. Jacobs had filed grievances?

14 A. No.

15 Q. Have you taken any action with respect to Mr. Jacobs  
16 based on the fact he filed a lawsuit against other DOC  
17 personnel from another institution?

18 A. No.

19 Q. Did you tell or encourage anybody to do anything with  
20 regard to the property that was taken from Inmate Lyons on  
21 September 15<sup>th</sup>, and from Inmate Jacobs on September 16<sup>th</sup>,  
22 as part of a conspiracy or an agreement to retaliate against  
23 Mr. Jacobs?

24 A. No.

25 Q. Did you do so as part of a conspiracy or agreement to

1 deprive Mr. Jacobs of his constitutional rights?

2 A. No.

3 Q. Inmate Banks had testified specifically that you and  
4 Lieutenant Giddens had deprived him of his legal property  
5 sometime in 2002, because he had filed grievances and  
6 lawsuits.

7 Did you do that?

8 A. I don't remember ever confiscating anything off of  
9 Banks.

10 Q. Showing you what's been previously marked as  
11 Plaintiff's Exhibit 8.

12 Do you recognize that as a DOC inmate grievance form?

13 A. Yes.

14 Q. That's from August 4<sup>th</sup> of 2003?

15 A. Yes.

16 Q. Submitted by Andre Jacobs.

17 Do you recall this grievance and the circumstances  
18 surrounding it?

19 A. No, I don't recall that at all.

20 Q. You don't recall this event? In it, Mr. Jacobs says  
21 that -- I believe that's intended to refer to you --  
22 CO Charokoe, C-H-A-R-O-K-O-E, and Lieutenant Giddens ransacked  
23 the cell and retrieved a stack of legal documents and left the  
24 pod.

25 Did you ever take -- on or about August 4<sup>th</sup>, 2003, did

1 you ever take legal documents from Mr. Jacobs?

2 A. No, I don't recall that at all.

3 MR. BRADLEY: That's all the questions I have.

4 Thank you.

5 CROSS EXAMINATION

6 BY MR. JACOBS:

7 Q. You stated you don't remember that incident, or you  
8 saying that it didn't happen at all?

9 A. I'm saying I don't remember it.

10 Q. Okay. You also stated you don't remember ever taking  
11 property from Mr. Banks; correct?

12 A. That's correct.

13 Q. You don't remember taking property from anyone; do you?

14 A. Ah, not -- if I took property, there was a confiscation  
15 sheet with it.

16 Q. But you don't remember?

17 A. No, I don't remember.

18 Q. Okay. You stated that cell searches in the LTSU were  
19 frequent; correct?

20 A. Correct.

21 Q. How frequent?

22 A. They were supposed to be done once a month.

23 Q. Once a month.

24 A. If I remember policy correct, once a month.

25 Q. At least once a month?

1 A. At least once a month.

2 Q. Giddens said at least twice a month.

3 A. That's what Lieutenant Giddens remembers. I remember  
4 it once a month.

5 Q. Okay.

6 A. That was five years ago.

7 Q. Okay. And you agree with me, that prisoners in the  
8 LTSU are always allowed to have legal material and religious  
9 material?

10 A. No. You can have more property than that. You have  
11 personal stuff you can have, not just legal and religious.

12 Q. Personal. When you say "personal", you mean? I mean,  
13 you wasn't allowed to have pictures; correct?

14 A. I don't remember. I don't recall.

15 Q. Weren't allowed to have magazines?

16 A. I don't know.

17 Q. Weren't allowed to have a television?

18 A. No, no television.

19 Q. You weren't allowed to have a radio?

20 A. No.

21 Q. So, when these cell searches were being conducted, the  
22 only thing you all are really looking for is legal documents?

23 A. No.

24 Q. That's the only thing there to take.

25 A. We were looking for any contraband.

1 Q. Any contraband.

2 You stated that policy dictates that a prisoner is not  
3 allowed to assist another prisoner with legal matters;  
4 correct?

5 A. Correct.

6 Q. What policy is that, do you know?

7 A. I'm not sure.

8 Q. Well, what policy would address things of that nature?

9 A. I think it's a DC ADMIN-007. I'm not familiar with  
10 that policy.

11 Q. Would that be access to provide legal services?

12 A. I'm not -- I don't know.

13 Q. I'm showing you what's been marked as Plaintiff's  
14 Exhibit No. 28. Is that the DC-ADMIN 007 you just referred  
15 to?

16 A. Yes.

17 Q. Are you familiar with that policy?

18 A. Like I stated, at a glance, I'm not familiar with it.

19 Q. As a Department of Corrections employee, isn't it a  
20 part of your duty to know the policies?

21 A. I don't know all the policies.

22 Q. I understand that. Isn't it part of your duty to  
23 familiarize yourself with the policies.

24 A. Yes, it is.

25 Q. And this is the policy that you acted on in you taking

1 the documents from Mr. Lyons; correct?

2 A. I acted on a policy that you're not allowed to possess  
3 another inmate's property, which Lyons had your property.

4 Q. Showing you what's been marked as Plaintiff's Exhibit  
5 No. 6. Do you see in there where you state that, in  
6 accordance with DOC policy you cannot possess another inmate's  
7 legal work unless recognized as a legal aid?

8 A. Yes.

9 Q. And the policy governing legal aids and legal access is  
10 this particular policy; isn't it?

11 A. Yes.

12 Q. Could you show me in that policy where it states that  
13 prisoners are not allowed to assist each other with legal  
14 work?

15 A. I'd have to see the policy. I can't remember it.

16 What was your question?

17 Q. I asked you to show me in that policy where it states  
18 that a prisoner who is not a legal aide cannot assist another  
19 prisoner with legal work.

20 A. There's a section here for selection of inmates. Since  
21 you pick Inmate Lyons, he doesn't qualify; he's not a  
22 qualified legal aid at the time.

23 Q. Can you show me in that policy where it states that a  
24 prisoner cannot assist another prisoner with legal work?

25 A. No, I don't see nothing.

1 Q. Were you -- were you present for the testimony of  
2 Mr. Beard?

3 A. Yes.

4 Q. Do you know who Mr. Beard is?

5 A. He's the Secretary of Corrections.

6 Q. You recall his testimony about a prisoner being able to  
7 assist another prisoner with legal work?

8 A. Yes, I do.

9 Q. So, it isn't the policy that a prisoner cannot assist  
10 another prisoner with legal work?

11 A. An inmate can assist another inmate with legal work, as  
12 long as he's qualified.

13 Q. Well, Mr. Beard --

14 A. Eric Lyons wasn't.

15 Q. Mr. Beard didn't say anything about having to be  
16 qualified. Do you remember him saying anything about having  
17 to be qualified?

18 A. No.

19 Q. Do you agree with me, that it is not the policy that a  
20 prisoner cannot assist another prisoner with legal work?

21 A. Say that again.

22 Q. It is not the policy that a prisoner cannot assist  
23 another prisoner with legal work?

24 A. No.

25 Q. It wasn't the policy at the time in question; was it?

1 A. The policy is right here.

2 Q. And it's not in there; correct?

3 A. Right.

4 Q. So your reference, your reference to the policy of the  
5 DOC was incorrect. Would you agree with me on that?

6 A. No. At the time I thought I was going by policy.

7 Q. And now you see in the policy that that was incorrect?

8 A. I guess, yes.

9 Q. And in fact, you made a reference to a DOC policy as a  
10 pretext to label that material contraband.

11 A. Right.

12 Q. Right?

13 A. Yes.

14 Q. And that was based on the fact that you saw  
15 Defendant Giddens' name mentioned in the legal documents?

16 A. No, that's not correct.

17 Q. And you work with Defendant Giddens?

18 A. Yes.

19 Q. And you've known Defendant Giddens for a long time;  
20 correct?

21 A. Yes.

22 Q. You didn't like the fact that I was preparing a legal  
23 action against Defendant Giddens?

24 A. That's not correct.

25 Q. You didn't care whether or not he violated my rights or

1 not?

2 A. Yes, I did care, but I didn't see anybody violating  
3 anybody's rights.

4 Q. But you just wanted to assist him in stopping me from  
5 bringing that claim?

6 A. That's incorrect.

7 Q. So you took these documents, right?

8 A. Yes.

9 Q. You did take the documents?

10 A. I confiscated them, yes.

11 Q. And you erroneously labeled them "contraband".

12 A. No, I didn't.

13 Q. You incorrectly labeled them "contraband"?

14 A. No, I didn't.

15 Q. You used the pretext that inmates are not allowed to  
16 assist each other with legal work?

17 A. Okay.

18 Q. You did?

19 MR. BRADLEY: Your Honor, I'm not sure he  
20 understands what the word "pretext" means.

21 THE COURT: Repeat your question.

22 BY MR. JACOBS:

23 Q. The basis of your taking those documents, according to  
24 this document, was that the DOC policy stated that prisoners  
25 are not allowed to assist each other with legal work.

1 A. Correct.

2 Q. But you agree with me that that wasn't the policy?

3 A. I said that a qualified inmate could assist you. I  
4 didn't say inmates couldn't help each other with legal work.  
5 I didn't feel at the time Inmate Lyons was a qualified legal  
6 aide. That's why I took them. They were contraband.

7 Q. But your whole purpose, but your whole purpose was to  
8 interfere with those legal documents?

9 A. No, it wasn't.

10 Q. And with me pursuing what was in those legal documents?

11 A. No, it wasn't.

12 Q. Well, you knew that those legal documents not being  
13 returned to me would interfere with my right of access to the  
14 Courts?

15 A. No, I didn't.

16 Q. You didn't know that?

17 A. No.

18 Q. You know that now?

19 A. Ah, that's what I've heard in testimony. I didn't know  
20 it at the time. I know nothing about the law, nothing.

21 Q. But you know about the policies; correct?

22 A. Correct.

23 Q. You know that prisoners are allowed to have legal  
24 material; correct?

25 A. Yes.

1 Q. You stated that -- when did your involvement in receipt  
2 of these documents end?

3 A. What do you mean?

4 Q. At what point did you disassociate yourself with these  
5 documents that were taken on the screen right now, the  
6 151 pages?

7 A. That was that day.

8 Q. So, you agreed to have those documents sent to the  
9 Security Department?

10 A. Yes.

11 Q. And you, in fact, put that process in motion?

12 A. I guess, yes.

13 Q. You issued the confiscation slip; correct?

14 A. Yes, I did.

15 Q. You stated on there that those documents would be sent  
16 to the Security Department?

17 A. Yes.

18 Q. But then, you also stated that after that no one talked  
19 to you about these documents?

20 A. That's correct.

21 Q. And you were present for the testimony of  
22 Defendant Giddens; right?

23 A. Yes.

24 Q. He stated he did an investigation into my grievance.  
25 Do you remember that testimony?

1 A. Yes, I do.

2 Q. And you were the person identified as taking the  
3 documents from Mr. Lyons; right?

4 A. Right.

5 Q. But nobody never came and talked to you?

6 A. I don't recall. I don't remember.

7 Q. And you don't recall Defendant Giddens ever coming to  
8 talk to you about, inquire about those particular documents;  
9 do you?

10 A. He might have asked me what I took, but that's probably  
11 all he asked me. I cannot remember.

12 Q. Do you remember him coming to you as part of a  
13 grievance investigation?

14 A. No, I don't recall.

15 Q. And there wouldn't be any need for him to talk to you  
16 about what the documents were, or what was the circumstances  
17 of the seizure, because he already knew; didn't he?

18 A. I don't know what he knew.

19 Q. Well he, he testified that he participated in the  
20 seizure of these documents, not the actual seizure, but the  
21 agreement to send them to the Security Department. So, he was  
22 aware that, that the seizure took place; correct?

23 A. I assume.

24 Q. And he agreed that this particular misconduct was a  
25 proper misconduct, as your supervisor; correct?

1 A. I assume.

2 Q. So, he knew about this, then?

3 A. I assume.

4 Q. You told him about the incident?

5 A. I notified him I was writing a misconduct and what I  
6 confiscated. What happened after that, I don't recall.

7 Q. And he reviewed the misconduct; correct?

8 A. I don't know.

9 Q. Isn't that the general practice, with him being your  
10 supervisor?

11 A. I showed it to him.

12 Q. You showed it to him, so he knew about the incident?

13 A. What he did after that, I don't know.

14 Q. Okay. You stated you didn't go to Mr. Lyons' cell on  
15 September 16<sup>th</sup>, 2003 to search for the misconduct that was  
16 issued, this particular misconduct?

17 A. Right.

18 Q. But Mr. Lyons' cell was searched; was it not?

19 A. I don't remember. I don't recall.

20 Q. You don't remember?

21 A. I don't recall.

22 Q. Do you remember any of the other cells that were  
23 searched on September 16<sup>th</sup>, 2003?

24 A. I'm pretty sure it was the entire pod.

25 Q. And if Mr. Lyons --

1 A. Might have been the whole half of the unit. I don't  
2 remember.

3 Q. And if Mr. Lyons was on that particular pod, that would  
4 include him?

5 A. Then he would have got searched, too.

6 Q. Okay. You heard the testimony of Mr. Banks that on  
7 occasion you seized documents, legal documents from him, too;  
8 correct?

9 A. That's what he claims.

10 Q. And that's not true?

11 A. I don't recall.

12 Q. You don't recall?

13 A. Like I said, if I would have took something, I would  
14 have gave him a sheet for it.

15 Q. You don't recall?

16 A. Don't recall.

17 Q. Is there any other occasion you recall taking  
18 prisoners' legal documents in the LTSU?

19 A. Not specifically, no.

20 Q. Destroying prisoners' legal property in the LTSU?

21 A. I never destroyed nothing.

22 Q. You never destroyed?

23 A. No.

24 Q. So, you always sent it to the Security Department?

25 A. That's right.

1 Q. And at that point, you're involvement with those  
2 documents ceases?

3 A. Yes.

4 Q. How long did you say you worked in the LTSU?

5 A. I think about a year.

6 Q. You first went there in 2003?

7 A. I think in early 2003.

8 Q. Could you estimate how many cell searches you  
9 participated in in that time frame?

10 A. What, my entire year?

11 Q. In the LTSU.

12 A. A lot.

13 Q. A lot. Do you ever remember yourself or another prison  
14 guard destroying the property of a LTSU prisoner?

15 A. No, I don't.

16 Q. Never happened?

17 A. No.

18 Q. Showing you what's been marked as Plaintiff's  
19 Exhibit No. 8. Do you know what that document is?

20 A. It's an official inmate grievance.

21 Q. Does that document refresh your recollection?

22 A. No, it doesn't. I don't remember.

23 Q. You still don't remember?

24 A. I don't remember that at all.

25 Q. At all?

1 A. No.

2 Q. Whose decision was it to process Mr. Lyons' misconduct  
3 for informal resolution, rather than formal resolution?

4 A. That would be up to the shift commander, I assume.

5 Q. Well, isn't that on the document, the person who writes  
6 the document?

7 A. Which document; on the misconduct?

8 Q. The misconduct.

9 A. I don't see the misconduct.

10 Q. You see up in the top, on the top of the document where  
11 it says, misconduct report, other DC-ADM 801 informal  
12 resolution?

13 A. Yeah, I see it.

14 Q. Wouldn't a person writing a misconduct be the one to  
15 identify in which way they want that misconduct to be  
16 processed?

17 A. No. That was up to the shift commander.

18 Q. So, the shift commander is the one that checked that  
19 spot off?

20 A. Yes. I left them blank.

21 Q. And is there any input from any of the people involved  
22 on how the misconduct should be processed?

23 A. What do you mean, "processed"?

24 Q. For formal resolution or informal resolution; do you  
25 have any input on that?

1 A. That's not up to me. I write the misconduct and turn  
2 it in. That's the shift commander's decision, what he does.

3 Q. Do you have any input in it?

4 A. I didn't. My input is on the paper.

5 Q. And do you have any idea what this determination is  
6 based on?

7 A. No. No, I don't.

8 Q. But you got Class 1 charges and you got Class 2  
9 charges; correct?

10 A. That's correct.

11 Q. Wouldn't the nature of the charges factor into how the  
12 misconduct is processed for formal or informal resolution?

13 A. Yes, they would.

14 Q. So, certain type of charges don't qualify for informal  
15 resolution?

16 A. That's right.

17 Q. So, if a person -- if two prisoners receive the same  
18 exact misconduct, in the same exact charges, would those  
19 misconducts be processed differently?

20 A. That's up to the shift commander. I don't sign off on  
21 that.

22 Q. I'm asking you your understanding of the Class 1,  
23 Class 2, informal/formal, and your understanding of the policy  
24 and the processing the misconduct.

25 A. I would assume, but that's not my decision.

1 Q. Showing you what's been marked as Plaintiff's  
2 Exhibit No. 7-A. Do you see any difference between the  
3 charges that were given to me and the charges that were given  
4 to Mr. Lyons?

5 A. They are the same, except for one charge.

6 Q. The exact same charges; correct?

7 A. They are not the exact same charges.

8 Q. I mean, the one that you're saying, that's the same?

9 A. Yes.

10 Q. And Mr. Lyons had one additional charge?

11 A. Yes.

12 Q. So, Mr. Lyons had more charges than I had?

13 A. Yes.

14 Q. And my misconduct was processed for formal resolution.

15 You see that?

16 A. I don't see it.

17 Q. You see it now?

18 A. Yes.

19 Q. And Mr. Lyons' misconduct was processed for informal  
20 resolution?

21 A. Right.

22 Q. This was based on you and Defendant Giddens'  
23 understanding that informal resolutions were not documented in  
24 the same way that formal resolutions were documented?

25 A. I don't know how none of them are documented. I don't

1 know nothing about that.

2 Q. You don't know nothing about that?

3 A. I write the misconduct and give it to the shift  
4 commander. That's the extent of it.

5 Q. That's what defendant Giddens thought.

6 A. Okay.

7 Q. That the misconduct -- that the informal resolution and  
8 formal resolution was not processed the same way.

9 MR. BRADLEY: Your Honor, to the extent he's asking  
10 what Lieutenant Giddens thought, I object.

11 THE COURT: Sustained.

12 BY MR. JACOBS:

13 Q. Were you present for the testimony of Mr. Giddens;  
14 correct?

15 A. Yes.

16 Q. You recall his testimony that he believed that --

17 MR. BRADLEY: Your Honor, his understanding, belief  
18 about what Lieutenant Giddens' testified to is not relevant  
19 here.

20 MR. JACOBS: I'm not asking him his belief; I'm  
21 asking him --

22 THE COURT: Let him finish the question, and then,  
23 I'll assess it.

24 BY MR. JACOBS:

25 Q. Do you recall Defendant Giddens' testimony that he

1 believed that the informal resolution process was not the same  
2 as the formal resolution process?

3 A. Yes.

4 MR. BRADLEY: Again, Your Honor, what he recalls  
5 about another witness' testimony is not relevant. It's the  
6 jury's recollection that controls.

7 MR. JACOBS: I'm moving on.

8 THE COURT: Move on. Okay, thank you.

9 BY MR. JACOBS:

10 Q. So, you were going to process this misconduct in a way  
11 you all thought you would be able to bury the misconduct?

12 MR. BRADLEY: Your Honor, I'm going to object, to  
13 the extent he already testified he didn't process this  
14 misconduct. He wrote it and gave it to the shift commander.

15 THE COURT: Okay. You need to rephrase your  
16 question in a way that would be consistent with the answers,  
17 and not to be --

18 MR. JACOBS: He initiated the process. He may not  
19 have signed --

20 THE COURT: Well, restate your question.

21 BY MR. JACOBS:

22 Q. You initiated the processing of this grievance of the  
23 misconduct in a way that you thought would be -- you would be  
24 able to bury the misconduct?

25 A. I didn't plan on burying nothing.

1 Q. But as part of an amendment to the DC-ADM 801,  
2 discipline policy, informal resolutions are to be processed  
3 the same way as formal resolutions.

4 MR. BRADLEY: Your Honor, there's no basis for that  
5 question for this witness; no foundation.

6 MR. JACOBS: It's in evidence.

7 THE COURT: But you have to lay a foundation as to  
8 his knowledge about it.

9 BY MR. JACOBS:

10 Q. Are you familiar with the DC-ADM 801?

11 A. Somewhat.

12 Q. Well, that's the policy that gives you the authority to  
13 write a misconduct; doesn't it?

14 A. Yes.

15 Q. And that is that authority that you processed the  
16 misconduct under?

17 A. I don't understand what you mean, "process". I wrote  
18 the misconduct.

19 Q. Based on DC-ADM 801?

20 A. Correct.

21 Q. Inmate discipline?

22 A. Yes.

23 Q. So, you're aware of the existence of the DC-ADM 801?

24 A. Excuse me?

25 Q. You're aware of the DC-ADM 801?

1 A. Yes.

2 Q. Inmate discipline policy?

3 A. Yes.

4 Q. You were aware of it in, at the time in question?

5 A. Yes.

6 Q. You were not aware that the informal resolution is  
7 supposed to be processed in the same way as the formal  
8 resolution?

9 A. Again, I don't process --

10 Q. I'm not asking you --

11 A. -- misconducts. I might have been aware, but I don't  
12 process them. I hand it to the shift commander, and that's  
13 the end of it.

14 Q. Okay. But you are not aware at the time in question  
15 that the informal resolution was not processed in the same way  
16 that the formal resolution is. You were not aware of that  
17 aspect of the policy?

18 A. Apparently not.

19 Q. Okay. No further questions.

20 REDIRECT EXAMINATION

21 BY MR. BRADLEY:

22 Q. This is the misconduct you wrote to Eric Lyons on  
23 September 15<sup>th</sup>, 2003; is that correct?

24 A. Yes.

25 Q. It's there in black and white?

1 A. Yes.

2 Q. And it's written down?

3 A. Yes.

4 Q. And you can see it?

5 A. Yes.

6 Q. And the jury can see it?

7 A. Yes.

8 Q. This misconduct was not buried; was it?

9 A. No.

10 Q. On your misconduct that you wrote to Eric Lyons for the  
11 record marked as Plaintiff's Exhibit 6, can you identify the  
12 shift commander who signed off on that?

13 A. On which one?

14 Q. On the one that you wrote. It would be the one with  
15 your signature on it.

16 A. Captain Claiborne.

17 Q. Although, your name appears on Plaintiff's  
18 Exhibit 7-A -- just move that down to show the top box --  
19 you're on there as other inmates or staff involved or  
20 witnesses; is that correct?

21 A. Yes.

22 Q. All right. But you didn't write this misconduct; is  
23 that correct?

24 A. No, I didn't write it.

25 Q. Did you tell Sergeant Lynch to write this misconduct?

1 A. No, I didn't.

2 Q. Can you identify who the shift commander that signed  
3 off on this misconduct is?

4 THE COURT: You need to try to speak into the  
5 microphone.

6 A. I can't -- it looks like Forte. I don't know if it's  
7 Lieutenant or Captain Forte. That's what it looks like. I'm  
8 not sure.

9 Q. Is that different than Claiborne?

10 A. Yes.

11 Q. So, two different people signed off on these inmates?

12 A. Yes.

13 Q. Or misconducts. And again, it's your testimony you  
14 have no idea why one was processed for formal resolution and  
15 the other was processed for informal resolution?

16 A. I don't know. It's not my decision.

17 Q. You didn't have any discussions about that issue with  
18 any of the defendants in this case; did you?

19 A. No.

20 Q. And you didn't ask anybody, whether a defendant or not  
21 in this case, to process Mr. Lyons' misconduct for informal  
22 resolution?

23 A. No.

24 Q. Mr. Jacobs had asked you if you could recall any other  
25 incident where you confiscated legal material from an inmate.

1 If not for this lawsuit, would you have remembered the  
2 incident on September 15<sup>th</sup>, 2003?

3 A. No, I wouldn't.

4 Q. Mr. Jacobs had asked you whether the reference to the  
5 legal aide was done as a pretext to issue this misconduct and  
6 confiscate the materials.

7 Did you understand what he meant by "pretext"?

8 A. No.

9 Q. Do you understand that "pretext" means a false reason?

10 A. Okay.

11 Q. When you wrote this misconduct, did you believe what  
12 you wrote?

13 A. Yes, I did.

14 Q. Did you believe that Mr. Lyons was in violation of DOC  
15 policy?

16 A. Yes, I did.

17 Q. You make the reference to legal aide, and I believe you  
18 were talking about, in your review of Plaintiff's  
19 Exhibit No. 28, selection of inmates. Going to have that --  
20 is that the page you were looking at?

21 A. Yes, it is.

22 Q. Is there something on that page that would indicate to  
23 you that Mr. Lyons was not a recognized legal aide under the  
24 policy?

25 A. Well, there's a few of them.

1 Q. Would you identify those for the jury?

2 A. Well for example. A, he had -- says, two years minimum  
3 remaining. He had a lot of time to do.

4 Not found guilty of a Class 1 misconduct within the  
5 preceding nine months, which I believe he was.

6 C. I don't think he was in the LTSU for six months at  
7 the time. And I don't know, I couldn't find anywhere if he  
8 was approved by anybody to be doing that to begin with.

9 Q. I also refer you to Item J on that list.

10 A. Yeah. He was in a Level 5 housing unit.

11 Q. In fact, all the inmates in the LTSU were Level 5's?

12 A. Yes.

13 Q. Just based on that criteria, none of the other inmates  
14 in the LTSU could be recognized legal aides under the  
15 Department of Corrections policy; is that correct?

16 A. No.

17 Q. Mr. Jacobs had also asked you about the fact that these  
18 inmates were only allowed to have religious and legal  
19 materials, and I believe was suggesting that the only reason  
20 you would be searching inmates' cells in the LTSU would be to  
21 search for legal materials.

22 Has -- you've indicated that the cells are searched  
23 frequently. Has contraband, property of another inmate been  
24 found in the course of cell searches in the LTSU?

25 A. Yes.

1 Q. What kind of contraband?

2 A. Weapons.

3 Q. Any other type of contraband?

4 A. There's, ah, I remember an inmate was found in  
5 possession of just all kind of personal information about a  
6 lot of different people; credit card numbers, stuff. There  
7 was credit card numbers, birth date, Social Security numbers,  
8 stuff like that.

9 MR. BRADLEY: Nothing further. Thank you.

10 RECROSS EXAMINATION

11 BY MR. JACOBS:

12 Q. In reference to the misconduct that was issued to  
13 Mr. Lyons, you stated that that misconduct was not buried,  
14 because it's documented; correct?

15 A. Correct.

16 Q. You attempted to bury that misconduct?

17 A. No, I didn't.

18 Q. And you were unable to bury that misconduct, because in  
19 the cell search that you conducted, you did not find it?

20 A. I didn't attempt to bury it at all. I wrote it. I  
21 don't see why I would attempt to bury it.

22 Q. You conducted the cell search of Mr. Lyons' cell. You  
23 attempted to find a document; correct?

24 A. Say that again.

25 Q. You searched Mr. Lyons' cell on September 16<sup>th</sup>, 2003.

1           You attempted to retrieve that misconduct and  
2 confiscation slip; correct?

3   A.    Negative.

4   Q.    Then, when my cell was searched on September 16<sup>th</sup>,  
5 2003, you attempted to retrieve that misconduct and  
6 confiscation items and proceed --

7   A.    Negative.

8   Q.    -- because you figured, if Mr. Lyons didn't have it, I  
9 would probably have it?

10   A.    I didn't think that at all.

11   Q.    But when that cell was searched, you did not discover  
12 it?

13   A.    No.

14   Q.    But at that time, you were already stuck with the  
15 grievance that was filed, as well as the document sent from  
16 Mr. McConnell, verifying that you all did, in fact, have these  
17 materials?

18   A.    Which paper is that? I don't know what you're talking  
19 about.

20   Q.    For the exhibit marked as Plaintiff's Exhibit No. 23.

21   A.    I don't know what that paper is. I never seen it  
22 before.

23   Q.    Okay. So, there was documentation, other documentation  
24 that these materials did exist?

25   A.    I don't know. The only thing I know about the paper

1 existing was the confiscation sheet I gave.

2 Q. You knew if you took that confiscation slip and that  
3 misconduct out of the equation, I had no proof that those  
4 documents were taken?

5 A. I didn't attempt to take them.

6 Q. I'm asking you, if you took that confiscated items  
7 receipt and that misconduct that was issued to Mr. Lyons, I  
8 would have no proof that those documents were taken?

9 A. I don't think -- I don't know.

10 Q. I mean, that's the only proof I was given at that time;  
11 wasn't it?

12 A. To you, yes.

13 Q. Yes, to Mr. Lyons.

14 A. Yeah. There were just confiscation sheets.

15 Q. And the misconduct. And that was the only  
16 documentation that existed?

17 A. I assume.

18 Q. And you and Defendant Giddens knew if you took those  
19 two documents, I would have no evidence at all to prove that  
20 you did -- that that incident did take place?

21 A. I didn't think that when I went in for the cell search.

22 Q. But I mean, you know that, though; don't you?

23 A. I do now.

24 Q. And that was why you all attempted to retrieve those  
25 documents?

1 A. I didn't attempt to retrieve any documents.

2 Q. That was why you all attempted to bury the incident.

3 A. I didn't attempt to bury nothing.

4 Q. The reason you all went through with it is because you  
5 all found out that Defendant McConnell -- that I had other  
6 documentation that those documents did exist?

7 A. I didn't know nothing about that.

8 Q. I'm showing you what's been marked as Plaintiff's  
9 Exhibit No. 7-A.

10 This misconduct is about -- did you take a moment to  
11 review the document?

12 A. Yes.

13 Q. And this misconduct is about Defendant Lynch taking  
14 documents from me that supposedly belonged to Gary Banks;  
15 correct?

16 A. That's what the misconduct says.

17 Q. And Defendant Lynch identified you as somebody that was  
18 involved in this search?

19 A. That's right. I was in the cell.

20 Q. If you look to where it says, people involved and  
21 people witness -- do you see that on the left side he checked,  
22 after "I". That indicates that you were involved; correct?

23 A. That's what he has marked.

24 Q. Too, if you look to the other side, it has your name  
25 again, and has "I" again?

1 A. Okay.

2 Q. Do you agree with me that you weren't just involved;  
3 you were also identified, supposed to be identified as a  
4 witness?

5 A. That doesn't have me checked as a witness.

6 Q. Yeah, but he already identified you as somebody that  
7 was involved, right, on the left side?

8 A. I can't answer that. I see my name twice. I can't  
9 answer why it's on there twice.

10 Q. Okay. So, you were involved, and involved?

11 A. That's what the misconduct says. I didn't write that  
12 misconduct.

13 Q. Okay. So, you were all in this cell. You were  
14 involved in the search?

15 A. I was involved in the cell search.

16 Q. You were in a cell; you, Lynch and Orpen.

17 A. Okay.

18 Q. You were all in the cell.

19 A. Yes.

20 Q. These documents were taken?

21 A. Apparently. I didn't take them.

22 Q. You didn't take them?

23 A. I didn't confiscate them. I didn't touch them. I  
24 didn't see them.

25 Q. You didn't see them?

1 A. No, I didn't.

2 Q. You didn't see them being taken?

3 A. I seen Sergeant Lynch with something in his hands he  
4 took out to the Lieutenant. I'm assuming, but I don't know  
5 the contents of the paperwork. I don't know. I didn't look,  
6 and I didn't ask.

7 Q. You stated, when Mr. Bradley showed you the  
8 DC-ADMIN 007 policy, that you believed that you were acting in  
9 accordance with policy?

10 A. That's right.

11 Q. But nowhere from that policy does it say that inmates  
12 cannot assist each other with legal work; correct?

13 A. I, I didn't see nothing.

14 Q. Okay. So, you were really basing your belief on the  
15 practice, and not the policy?

16 A. What do you mean, "the practice"?

17 Q. The practice of how you all interpreted, how you all  
18 dealt with prisoners' legal property.

19 A. I still don't understand you.

20 Q. Well, when you took those documents from Mr. Lyons, you  
21 were acting pursuant to a policy, unwritten policy and  
22 practice in the LTSU of interfering with prisoners' rights to  
23 access to the Courts.

24 A. I don't know of any such policy. That's -- never heard  
25 it.

1 Q. Never heard of it?

2 A. No.

3 Q. And you weren't basing your actions on a policy, a  
4 written policy?

5 A. I was basing my actions on an inmate having the  
6 property of another inmate, that's all.

7 Q. Legal property?

8 A. I assumed it was legal property. That's what  
9 Inmate Lyons told me, it was legal property.

10 Q. You identified it as legal property?

11 A. He identified it to me. I don't know what legal  
12 property is.

13 Q. You identified on the misconduct report as "legal  
14 property"?

15 A. Right.

16 Q. You identified it on the confiscated items receipt as  
17 "legal property"?

18 A. Right.

19 Q. And you looked through these materials?

20 A. Right.

21 Q. And you know that it was legal property?

22 A. No, I didn't know it. Everything was legal property.  
23 I saw your names. I asked Lyons what this was. He told me,  
24 legal work.

25 Q. My name could have been on anything; right?

1 A. It was on those papers. I asked Lyons what it was. He  
2 told me, "legal work". That's all I know.

3 Q. So, you're saying it doesn't matter what he has that  
4 has my name on it; it's contraband to --

5 A. To me, at the time, it was.

6 Q. I'm asking you. You saying, "at the time". At the  
7 time, anything that Mr. Lyons has in his possession with my  
8 name on it is contraband?

9 A. Yes.

10 Q. So, if I write an article and you find it in Mr. Lyons'  
11 possession, and my name is on it, that it is contraband, too?

12 A. What do you mean, "an article?"

13 Q. Any article; a news article.

14 A. Yes, it is.

15 Q. It's contraband?

16 A. Yes, it is. If your name is on it, it's contraband.  
17 If your name is not on it, I don't know that it came from you.

18 Q. Just because my name is on it, doesn't mean it came  
19 from me; does it?

20 A. That's what I thought at the time.

21 Q. You thought at the time?

22 A. Yes, I did.

23 Q. You just testified, too, that you recall in a cell  
24 search that you found some names and numbers, or something  
25 like that.

1 A. Which cell search?

2 Q. You never really identified the cell search. You just  
3 said that you recall a certain cell search in the LTSU where  
4 you found some contraband. You found people's name and ID  
5 numbers.

6 A. I didn't personally find it, but it has happened in the  
7 unit before.

8 Q. You didn't personally find it?

9 A. No.

10 Q. But you remembered that particular cell search?

11 A. Yes. I wasn't involved in the cell search, but things  
12 were passed on from shift to shift of what was going on.

13 Q. So, it wasn't even on your shift?

14 A. I don't remember.

15 Q. But you remember the things that you found, but you  
16 don't remember now of the things that you take?

17 A. I don't remember what I took off you -- off of Lyons  
18 that day. It's not -- if a confiscation sheet says "legal  
19 work", that's what I took. I'm standing by what I took.

20 Q. But you identify an incident where you recall something  
21 that was supposedly found in an LTSU prisoner cell; correct?

22 A. What was found? I don't understand what you mean.

23 Q. You said that some names and numbers, and things like  
24 that --

25 A. Yes.

1 Q. -- was found?

2 A. Yes.

3 Q. And then, didn't even happen on your shift; did it?

4 A. No, it --

5 Q. Happened on another shift?

6 A. It might have. I don't remember. I might have been  
7 off that day. I don't know.

8 Q. You said the information is passed on from person to  
9 person, and you heard about it?

10 A. Probably, yes.

11 Q. But you didn't participate in it yourself?

12 A. No.

13 Q. So again, you remember the things that are found in an  
14 LTSU prisoner cell, but you don't remember nothing that's  
15 taken?

16 A. What do you mean, what was taken?

17 Q. I mean, I asked you before, do you ever remember legal  
18 property being taken from prisoners in the LTSU. You said you  
19 don't recall; right?

20 A. That's right, I don't.

21 Q. I asked you, did you recall ever taking any legal  
22 property from me; correct?

23 A. Correct.

24 Q. You says you didn't recall?

25 A. No, I don't.

1 Q. I showed you this document right here and I asked, did  
2 it refresh your recollection as to whether you ever took any  
3 legal documents from me, and you said you didn't recall;  
4 correct?

5 A. Correct.

6 Q. But yet, you recall contraband you're supposed to have  
7 found in another prisoner's cell. Oh, that was found in  
8 another prisoner's cell; right?

9 A. Correct.

10 Q. But you don't remember the things that you take?

11 A. That's just something that stuck out in my mind, that's  
12 all.

13 MR. JACOBS: No further questions.

14 REDIRECT EXAMINATION

15 BY MR. BRADLEY:

16 Q. Officer Chirico, Mr. Jacobs is indicating, if you had  
17 never issued the misconduct, then, he would have had no proof  
18 that these materials were taken.

19 You recall that?

20 A. Yes.

21 Q. You issued a misconduct, though; didn't you?

22 A. Yes; to Inmate Lyons, I did.

23 MR. BRADLEY: Nothing further.

24 THE COURT: Anything else?

25 MR. JACOBS: No further questions.

THE COURT: Okay. The witness will be excused.

2 This might be a good time for our lunch recess,  
3 before we begin with another witness.

4 Would everyone please rise and excuse the jury.

5 || (Whereupon, jury retires.)

6 THE COURT: We'll be in recess.

7 (Whereupon, court recessed at 12:25 p.m.)

8 || \* \* \* \* \*

13 MR. WILLIG: Right, Your Honor. I made inquiry with  
14 SCIF personnel. Mr. Alton Brown, one of Mr. Jacobs' witnesses  
15 on that case, is being housed in the A-100 unit, the regular  
16 RHU unit.

17 THE COURT: Which facility is that?

20 THE COURT: Now, the other thing I need to talk  
21 about about the 04-1592, because this case is taking so long,  
22 I'm not sure we're going to finish with all the witnesses  
23 today, and we've set aside Monday and Tuesday also for this  
24 case.

25 We also have to have a final pretrial conference and

1 resolve all the outstanding legal issues with respect to what  
2 claims are going to be presented to the jury.

3 So, you know, I expect it will take Monday and  
4 Tuesday of next week. We won't be in session tomorrow. I  
5 would like to release the jury that we've selected in the 1592  
6 case, because the next available day I have will be in  
7 January, and then, I have the first week in March for -- we  
8 have two trials coming up.

9 We can do one in January and one in March, and we're  
10 going to have, right when we're finished today, we're going to  
11 get on the phone, the lawyers who are representing the  
12 plaintiff in the third case, and I thought, if you don't mind,  
13 I would give them the choice, since they are doing this pro  
14 bono, as to whether they want the January date or the March  
15 date.

16 MR. WILLIG: Sure.

17 THE COURT: Are you okay with that? Are you okay  
18 with me letting the jury go?

19 The problem is, if they are going to be out for  
20 another month and a half and two months. It's unreasonable to  
21 keep them not reading newspapers and that type of thing, and  
22 we'll just pick a new jury.

23 MR. BRADLEY: Your Honor, do you have a date in  
24 March? Because I'm scheduled with a, probably going to be an  
25 extensive trial with Judge Gibson.

1                   THE COURT: It's the first week in March, March 2<sup>d</sup>.

2                   MR. BRADLEY: That's when I'm scheduled to start  
3 with Judge Gibson. So, I think that's within that time frame.  
4 That's the only trial I have scheduled at this point, but it  
5 is scheduled with Judge Gibson for March 2d.

6                   THE COURT: Okay.

7                   MR. WILLIG: Maybe, maybe the counsel on this  
8 Mr. Jacobs' third case, maybe they can go in January. That's  
9 with the one --

10                  THE COURT: We'll check with them tonight. So, it  
11 may not be a problem, because, then, Mr. Willig has the third  
12 case that would be in March.

13                  MR. WILLIG: Yes.

14                  THE COURT: Okay. I'll give you the dates in  
15 January at the end of the day, but we'll release that jury.

16                  MR. JACOBS: Just, did you receive my motions? I  
17 gave some motions.

18                  THE COURT: I have those motions.

19                  MR. JACOBS: Okay.

20                  No. 2 is, Mr. Brown was housed on A-100 at one time.  
21 He came in Monday, I believe it was, and then, yesterday, that  
22 was when he was moved up to A-300. So, what he said was  
23 halfway true. At one time he was on A-100, and A-300.

24                  THE COURT: They are telling me he's on A-100  
25 presently, and he's at no time been on the A-300.

1 Is that correct?

2 MISS SCIRE: That's correct, ma'am. I called the  
3 Institution.

4 MR.WILLIG: That's Miss Scire. She called the  
5 Institution. A-100?

6 MISS SCIRE: Correct.

7 THE COURT: Through the whole time?

8 MISS SCIRE: Correct, ma'am.

9 THE COURT: Okay.

10 THE COURT: So, they are making representations to  
11 the Court. If they are not, I'll have to refer this matter  
12 also, but you know.

13 MR. JACOBS: I ` them being moved. That's how I  
14 know he got moved. I watched him be moved.

15 THE COURT: But you didn't see where he went.

16 MR. JACOBS: Well, I see that he left A-100.  
17 There's only two sides. The other side is population side.  
18 The other side is the hole, and he left out the unit. So, and  
19 he was told when they moved him from the cell, where am I  
20 going? A-300. This was yesterday.

21 THE COURT: Okay. Well, check again. Check again  
22 and report back to me at the end of the day.

23 Are we ready to continue?

24 Please rise for the jury.

25 (Whereupon, jury was seated.)

1 THE COURT: Please be seated.

2 MR. BRADLEY: Your Honor, the defendants now call  
3 Allen Lynch.

4 THE COURT: The witness could please come forward,  
5 and stand in front of the court reporter to be sworn.

6 SHARON CONLEY, Deputy Clerk: Please raise your  
7 right hand.

8 THE WITNESS: I do.

10 ALLEN LYNCH, a witness herein, having been  
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BRADLEY:

14 Q. Please state your name for the record, and spell your  
15 last name.

16 A. Allen Lynch, L-Y-N-C-H.

17 Q. How you currently employed?

18 A. At SCI Pittsburgh.

19 Q. What position do you hold?

20 A. Sergeant, Corrections Officer 2.

21 Q. How long have you been with the Department of  
22 Corrections?

23 A. January, it will be eight and a half years.

24 Q. And could you just tell the jury your progression  
25 through the Department of Corrections from the time you

1 started?

2 A. Sure. I started July 10<sup>th</sup> of the year 2000, as a  
3 corrections officer trainee. I was a trainee for one year.  
4 Then, I was promoted to Corrections Officer 1, until May of  
5 2003, where I was promoted to sergeant.

6 In March of 2004, when I transferred to SCI Fayette,  
7 you can't transfer as a sergeant, so I had to go back to CO 1,  
8 Corrections Officer 1, and then, I was an SCI Fayette until  
9 December of 2004, where I transferred to SCI Greene, and I  
10 remained there as a Corrections Officer 1 until July of '07,  
11 when I came back to Pittsburgh.

12 And then, in January of '08, I got re-promoted back to  
13 sergeant again.

14 Q. You've been present for the testimony in the courtroom  
15 this week?

16 A. Yes.

17 Q. And the previous week? Obviously, these events are  
18 centered around September of 2003.

19 Can you tell the jury what your assignment was and what  
20 your position was in September of 2003?

21 A. I was assigned to the sergeant position in the LTSU  
22 A-300.

23 Q. How long had you been in the LTSU at that point?

24 A. That point total, Corrections Officer 1 and sergeant.  
25 Probably been there about, about a year.

1 Q. There's been testimony in this case regarding a search  
2 of Inmate Eric Lyons on September 15<sup>th</sup> as he was coming out  
3 of the law library. Were you involved in that in any way?

4 A. With Inmate Lyons; no, sir.

5 Q. So, just so I'm clear, you didn't have any involvement  
6 with the decision to confiscate the papers from Mr. Lyons?

7 A. No, sir.

8 Q. You were not involved in decision to issue the  
9 misconduct?

10 A. No.

11 Q. You were not involved in the decision to process that,  
12 that misconduct for informal resolution?

13 Q. No.

14 Q. Did you ever see the papers involved in that matter?

15 A. Before this trial, no.

16 Q. Did you ever see the materials that were taken from  
17 Mr. Lyons?

18 A. Actually, I need to correct that, because I think the  
19 misconduct to Inmate Lyons, I think I'm the one that served it  
20 to him, but I don't really remember. I think I'm the one that  
21 served it to him, so.

22 Q. With regard to the materials that were taken from  
23 Mr. Lyons, did you ever see those materials?

24 A. No, sir.

25 Q. Did, did you have any connection with the disposition

1 of those materials?

2 A. No.

3 Q. Are you familiar with the plaintiff in this case, Andre  
4 Jacobs?

5 A. Yes, I am.

6 Q. And how do you know Mr. Jacobs; how you familiar with  
7 him?

8 A. Because he was housed in the LTSU A-300 while I worked  
9 there.

10 Q. Were you involved in the search of Mr. Jacobs' cell on  
11 September 16<sup>th</sup>, 2003?

12 A. Yes, I was.

13 Q. Can you explain to the jury what your role would have  
14 been in that search, and why that search was conducted?

15 Q. Well, the search was conducted. Um, every, every cell  
16 in the LTSU -- and this will clarify something that was said  
17 earlier -- every cell had to be searched, yes, at least once a  
18 month. But however, Lieutenant Giddens testified that  
19 officers on 2:00 to 10:00 had to search them twice a month,  
20 and 10:00 to 2:00. And it was twice a month. That day I was  
21 the sergeant on the unit, and I assisted with the cell search.  
22 I was in the cell, searching the cell.

23 Q. And was anything recovered during that search?

24 A. Yes. I recovered two pieces of paperwork that belonged  
25 to Inmate Gary Banks from Inmate Jacobs' cell.

1 Q. And why do you say it belonged to Inmate Gary Banks?

2 A. Because the two pieces of paper I confiscated, I  
3 remember picking them up off Inmate Jacobs' desk, and the  
4 first paper I looked at clearly stated, Gary Banks versus the  
5 Department of Corrections. So therefore, I assume it is Gary  
6 Banks' paperwork.

7 Q. And at that point you made the determination to  
8 confiscate those materials?

9 A. Yes, I did.

10 Q. Did you see other legal materials in Mr. Jacobs cell at  
11 that time?

12 A. Yes, sir.

13 Q. What did you do with those materials?

14 A. I searched through it, as I'm supposed to do, and found  
15 no contraband in that other legal work, and I left it in his  
16 cell.

17 Q. Were you involved -- let me ask it this way.

18 There's been testimony in this case that Mr. Lyons'  
19 cell was searched that same day, looking for the misconduct  
20 that had been issued the day before.

21 Do you have any knowledge of any discussions, any  
22 agreements, any directions from anyone, including the  
23 defendants, that there was to be a search of Mr. Lyons' cell  
24 in order to retrieve the misconduct that Officer Chirico had  
25 written the day before?

1 A. No, not for the purpose of retrieving any kind of  
2 paperwork.

3 Q. And again, was that ever expressed as the reason you  
4 were searching Mr. Jacobs' cell that day, to look for the  
5 misconduct that had been issued to Mr. Lyons the day before?

6 A. No, sir. It was merely a monthly cell search that we  
7 did every month.

8 Q. And is it your recollection that all of the cells in  
9 that search -- all of the cells on that pod were searched at  
10 the same time on that same occasion?

11 A. Yes, sir. I think it was even Mr. Lyons that testified  
12 that every cell in the pod was searched that day.

13 Q. And that wasn't an unusual occurrence on the LTSU?

14 A. Not. I mean, we had 40 cells, and each cell had to be  
15 searched once a month. So usually the way we did it is we  
16 take one pod pretty much per week. We do a pod or a pod and a  
17 half per week, so we can get it all accomplished within one  
18 month.

19 Q. And I know the term has come up before, but could you  
20 just explain to the jury maybe what the physical set up is,  
21 and when you say "pod", what do you mean by that?

22 A. Sure. When you walk onto the unit, the entire unit  
23 consists of two sides. We had an A house, which housed the  
24 disciplinary custody inmates, and the B side, which housed the  
25 administrative custody inmates.

1                   On each side, the A and B side, each side had three  
2 pods; like Pods 1, 2 and 3. Each pod, I believe, had eight  
3 cells in it.

4 Q.           As a result of discovering the two pieces of paper that  
5 you believed to be the property of Mr. Banks, did you -- what  
6 did you do?

7 A.           After I confiscated the paperwork?

8 Q.           Yes.

9 A.           I wrote a DC-154A, confiscated items receipt. I also  
10 wrote a DC-141 misconduct report, and I believe I annotated on  
11 both that the items that I confiscated was placed -- they were  
12 held on the unit for the purpose of the hearings, because due  
13 to the types of inmates we had in LTSU, the hearings were held  
14 on the unit. And we had a locker in our armory with a lock on  
15 it, and that's where we would put contraband, to hold it for  
16 the purpose of the hearing.

17                   And then, I annotated on the confiscated items receipt  
18 that after the hearing the items will be turned over to the  
19 Security Department for disposition.

20 Q.           I have a document indicated and previously marked as  
21 Plaintiff's Exhibit 7-A. Do you recognize that document?

22 A.           Yes. It's the misconduct that I wrote.

23 Q.           And can you just read what's written there in the  
24 "staff member's version"?

25 A.           Sure. It says, on the above date and time, while

1 performing cell searches on the LTSU, this sergeant came  
2 across two pages of legal papers belonging to Inmate Gary  
3 Banks, CT-8731, in Inmate Jacobs' cell. These items will be  
4 held on the LTSU until misconduct hearing. It will then be  
5 sent to the Security Office. DC 154A, No. 419641.

6 Q. That last number you just read off, is that a reference  
7 to another document?

8 A. Yeah. It's a reference to the confiscated items  
9 receipt.

10 Q. Plaintiff's 7-B. This document has previously been  
11 marked as Plaintiff's Exhibit 7-B. Do you recognize this  
12 document?

13 A. Yes, I do. It's the confiscated items receipt.

14 Q. That was what was referred to on the misconduct?

15 A. Yes, sir.

16 Q. Again, what does this identify?

17 A. The two pages of legal work that I took from  
18 Inmate Jacobs that belonged to Gary Banks. You want me to  
19 read exactly what it says there.

20 Q. I think that's sufficient.

21 A. It's also annotated thereon, too, in the comment  
22 section, what I did with the property after it was  
23 confiscated.

24 Q. Perhaps you could read that for the jury.

25 A. Sure. In the comment section, it says, LTSU cell

1 search. Held on unit for misconduct hearing, then sent to  
2 Security Office. And there's also reference to misconduct  
3 No. A469506.

4 MR. JACOBS: Put 7-A up again.

5 BY MR. JACOBS:

6 Q. This issue came up in the testimony of Officer Chirico,  
7 under the "other inmates or staff involved or witnesses"  
8 section. Officer Chirico's name appears to appear twice.

9 First, let me ask you this. Was only one  
10 Officer Chirico that works in the LTSU?

11 A. Yes, there is. I just probably made a simple mistake  
12 of writing the name in twice.

13 Q. As you sit here today, did you intend to list him as a  
14 witness, or list him twice, or would you normally list CO's as  
15 involved on one line, and then, as witnesses in the other?

16 A. No, not on two separate lines like that. Like I said,  
17 it was probably just a mistake I made.

18 Q. But you did put Officer Chirico's name on the document?

19 A. As involved, yes.

20 Q. And to your recollection, he was evolved?

21 A. With the cell search, yes, sir. And that's what I  
22 mean, every name on there, when you put names on there, as  
23 involved. It's kind of a wide range of what it means to be  
24 involved. I mean, just simply putting Chirico was involved,  
25 it means he was involved with the cell search. It doesn't

1 necessarily always mean he was involved with actually  
2 confiscating the material or anything like that.

3 Q. Once you secured the documents and issued the  
4 misconduct, did you have any further involvement with the  
5 processing or adjudication of this misconduct?

6 A. No, sir.

7 Q. Did you have any discussions with the hearing examiner  
8 that adjudicated this misconduct about this misconduct?

9 A. No, sir.

10 Q. Did anybody tell you to issue this misconduct because  
11 Mr. Jacobs was involved in filing grievances?

12 A. No, sir.

13 Q. Did anybody tell you to file this misconduct against  
14 Mr. Jacobs because Mr. Jacobs was filing a lawsuit against  
15 other DOC personnel?

16 A. No, sir.

17 Q. At the time you issued this misconduct, and at the time  
18 you confiscated these two pages of materials from his cell,  
19 were you aware Mr. Jacobs had filed grievances previously?

20 A. I was aware that he had filed grievances, yes, but I'm  
21 never sure as to -- I'm not a part of the grievance process,  
22 so I'm not ever sure as to who he's filing it on, or what he's  
23 filing. It's -- the only way I would know anyone even files a  
24 grievance is when we pick up the mail.

25 We pick up the mail, which includes grievances, or any

1 other paperwork they are turning out, and we put it into the  
2 mailbox. But as far as, I'm not aware of who he files them on  
3 or what the reason for filing them is.

4 Q. On that day, September 16<sup>th</sup>, 2003, were you aware  
5 Mr. Jacobs was pursuing litigation against DOC members from  
6 SCI Pine Grove?

7 A. No, sir.

8 Q. On or before September 16<sup>th</sup>, or in the days, and  
9 weeks, and months that followed through the disposition of  
10 these administrative processes, did you have any discussions  
11 with any of the other defendants in this case, in terms of  
12 attempting to bury misconducts or cover up incidents, because  
13 Mr. Jacobs had filed grievances or filed lawsuits?

14 A. No, sir.

15 Q. Do you recall having any discussions with any of the  
16 defendants about Mr. Jacobs, about his grievance filing or his  
17 litigation filing?

18 A. No, sir.

19 Q. You indicated that although you were not aware of any  
20 particular litigation Mr. Jacobs was involved with, you  
21 understood that he had, or you were aware that he did file  
22 grievances.

23 Did the fact Mr. Jacobs was filing grievances cause you  
24 to take any actions against him, or treat him differently than  
25 other inmates?

1 A. No, sir.

2 Q. Were you aware of the policy or practice, whether  
3 written or unwritten, formal or informal, in the LTSU in 2003  
4 whereby inmates who engaged in litigation and grievance  
5 activities would be retaliated against?

6 A. No, sir.

7 Q. Did you ever engage in any retaliation against inmates  
8 who file grievances or law enforcement?

9 A. No, sir.

10 Q. Other than issuing this misconduct to Mr. Jacobs on  
11 September 16<sup>th</sup>, 2003, were you involved in any of the other  
12 aspects of Mr. Jacobs' case, as you've heard it in this  
13 courtroom?

14 A. No, I wasn't.

15 Q. Did you take any action with respect to Mr. Jacobs,  
16 based on the fact that he had filed grievances?

17 A. No.

18 Q. At any time?

19 A. No.

20 Q. Did you take any action at any time with respect to  
21 Mr. Jacobs, based on the fact he had filed a lawsuit?

22 A. No.

23 Q. Did you direct anyone, including the defendants, to  
24 take any retaliatory action against Mr. Jacobs, or any action  
25 to deprive his access to Courts?

1 A. No.

2 Q. Did you ever have any agreement, whether explicit or  
3 implicit, with the other defendants to take any retaliatory  
4 action against Mr. Jacobs, or any action to deprive his access  
5 to Courts?

6 A. No, sir.

7 Q. Thank you.

8 MR. BRADLEY: No further questions.

9 CROSS EXAMINATION

10 BY MR. JACOBS:

11 Q. Good afternoon, Mr. Lynch.

12 A. Good afternoon.

13 Q. You stated that the documents, stated the documents  
14 that you took on September 16<sup>th</sup>, 2003 stated on the top of  
15 them, Gary Banks versus the Department of Corrections?

16 A. Yes, I stated that.

17 Q. How is that -- how is it that you remember that  
18 specific language today?

19 A. Because I tried -- I try to remember things from the  
20 unit that happen -- cells that I searched, items that I  
21 confiscated -- for purposes like today.

22 Q. Okay. Was my name on the document, too?

23 A. No, it wasn't.

24 Q. You remember that?

25 A. It could -- your name could have been in the body of

1 the document somewhere. I don't know. I'm not permitted to  
2 read your paperwork. As Lieutenant Giddens testified, we scan  
3 through it to see if anything stands out, and what stood out  
4 to me right off the bat, as soon as I opened it, was real big,  
5 says, Gary Banks versus the Department of Corrections.

6 Q. Did the word "declaration" stand out?

7 A. I didn't see the word "declaration", no.

8 Q. All right. Showing you what's been marked as  
9 Plaintiff's Exhibit No. 24. Going to draw your attention to  
10 No. 7.

11 A. Okay.

12 Q. Do you remember the title of the two pages of the  
13 documents that were taken?

14 A. Do I remember the title of the two pages?

15 Q. Yeah. The documents that you took on September 16<sup>th</sup>,  
16 2003.

17 A. I don't remember the title of them, no.

18 Q. You don't. Would it have stood out to you?

19 A. It may have at the time. I don't know. I don't  
20 remember at this time. What I remember from it thoroughly was  
21 it said, Gary Banks versus the Department of Corrections.

22 Q. Okay. You see the answer?

23 A. Excuse me?

24 Q. You see the answer?

25 A. For No. 7?

1 Q. Yes.

2 A. Yeah.

3 Q. How were those documents identified?

4 A. According to this, it says, the two documents  
5 confiscated from Mr. Jacobs were unsworn declarations.

6 Q. That is the only identification of those documents  
7 beyond what was in your misconduct; correct?

8 A. What do you mean?

9 Q. The documents, the way you identified the documents in  
10 the misconduct was just "property, two pages of legal papers  
11 belonging to Inmate Gary Banks"?

12 A. Yes.

13 Q. You didn't identify what type of legal paper it was?

14 A. On my misconduct, no, I didn't.

15 Q. And throughout the litigation of this case, it was  
16 identified what those documents were?

17 MR. BRADLEY: Your Honor, I don't know that there's  
18 a foundation for him to testify to what those documents refer  
19 to throughout the litigation.

20 MR. JACOBS: This is evidence in the case.

21 THE COURT: Just a second.

22 MR. JACOBS: It's evidence in the case.

23 THE COURT: We'll excuse the jury for a minute.

24 (Whereupon, jury retires.)

25 THE COURT: Please be seated.

1                   Since the documents have not been located -- these  
2 are the two pages that were taken; is that what we're talking  
3 about here?

4                   MR. JACOBS: Yes.

5                   THE COURT: Okay. Those documents have not been  
6 located, is that correct; right?

7                   MR. JACOBS: Correct.

8                   THE COURT: And there was testimony from the  
9 plaintiff's witnesses about the nature of those documents.  
10 But I think the inquiry here is that while that did come in  
11 evidence in your case, the question is whether it's an  
12 established fact, and it's --

13                   MR. JACOBS: They admitted to it. This, in the  
14 interrogatory in the case they identified them as the "unsworn  
15 declarations" themselves.

16                   THE COURT: Right. But the question of whether it  
17 was in Mr. Banks' case or in your case, this witness is  
18 testifying that he viewed them as having a caption from  
19 Mr. Banks'.

20                   MR. JACOBS: This was an interrogatory directed to  
21 this defendant.

22                   THE COURT: But an unsworn declaration, it doesn't  
23 say a declaration as to who or about what.

24                   MR. JACOBS: But when I asked him to identify what  
25 the document was, he never identified it as, as a Department

1 of Corrections, Gary Banks versus Department of Corrections.

2 MR. BRADLEY: The question doesn't ask that. It  
3 asks what the title was. And again, this is one of those  
4 interrogatories that was directed to half a dozen defendants.  
5 And so, we just provided responses. And it's not clear to me  
6 at this point specifically which defendant responded to this.

7 Obviously, somebody knew it was an unsworn  
8 declaration. He's testified that that wasn't him.

9 MR. JACOBS: Well, he's the only defendant that took  
10 the documents. He took them.

11 MR. BRADLEY: And he's testified he didn't know what  
12 the title was. He testified he knows what is at the top. He  
13 testified he doesn't know what the title was.

14 THE COURT: He can be asked if he reviewed this  
15 answer, and that was his answer at the time.

16 MR. BRADLEY: I mean, I don't have a problem with  
17 him being questioned on this, but he was asking something  
18 about throughout the litigation, the knowledge of this witness  
19 throughout the litigation, and I just -- he wouldn't know.

20 THE COURT: You need to probe his knowledge at the  
21 time that the documents were taken.

22 MR. JACOBS: I can ask him, and this was his answer.

23 THE COURT: Right. You can ask him if he had  
24 reviewed this and if he agreed with that.

25 MR. JACOBS: Okay. I need go to the bathroom.

1                   THE COURT: Oh, okay. We'll take a break. We'll  
2 recess for five minutes.

3                   (Whereupon, court recessed at 2:10 p.m.)

4                   \* \* \* \* \*

5                   (Whereupon, court reconvened at 2:15 p.m.)

6                   THE COURT: Please rise for the jury.

7                   (Jury is seated.)

8                   THE COURT: Please be seated.

9                   Mr. Jacobs, would you please rephrase your question.

10 BY MR. JACOBS:

11 Q.           Do you see the writing in the bold print?

12 A.           There's a lot of writing in bold print. Specifically,  
13 which one?

14 Q.           Defendants' response to plaintiff's interrogatories and  
15 request for production of documents, directed to Ferson,  
16 Simpson, McCoy, Lynch, Bittner and Mankey.

17 A.           Yes, I see it.

18 Q.           " Lynch", that would be referring to you?

19 A.           Yes, sir.

20 Q.           There two reflect your response to my request for  
21 interrogatories?

22 A.           This paper here?

23 Q.           Yes.

24 A.           I, I don't know if it does or not. The only thing I  
25 can see on this paper is what you just read to me.

1                   THE COURT: Perhaps you could take the document to  
2 the witness.

3                   MR. BRADLEY: Your Honor, for the record, I would  
4 stipulate that that was the response prepared in response to  
5 Mr. Jacobs' request.

6                   THE COURT: Right. Just a question of whether he  
7 has reviewed it, he had previously reviewed it.

8 BY MR. JACOBS:

9 A.               What was the question?

10                  THE COURT: Have you finished reading it?

11                  THE WITNESS: Yeah. I looked over it. I didn't  
12 read it.

13                  THE COURT: Ask your question now, Mr. Jacobs.

14 BY MR. JACOBS:

15 Q.               And that will reflect your response to my question of  
16 what those documents were?

17 A.               I don't understand what you're asking me. I mean, my  
18 response to what the documents were; I don't know what the  
19 documents were.

20 Q.               You don't know what the documents were?

21 A.               I wrote on the confiscation slips it was legal papers  
22 containing Gary Banks' name.

23 Q.               You don't know what legal documents were?

24 A.               I'm not a lawyer. I don't know what they are. But  
25 they clearly said, Gary Banks against the Department of

1 Corrections.

2 THE COURT: Just listen to the question. Let him  
3 finish the question.

4 BY MR. JACOBS:

5 Q. Those documents right there in your possession reflect  
6 identification by defendants in this case of what those  
7 documents were; correct?

8 A. According to No. 7.

9 Q. According to No. 7?

10 A. Yes, that's what it says.

11 Q. And according to the misconduct which we reviewed  
12 earlier, Plaintiff's Exhibit No. 7-A -- remember that  
13 document?

14 A. Misconduct, yes.

15 Q. The document that you wrote?

16 A. The misconduct I wrote, yes.

17 Q. You were the only one that took the documents; correct?

18 A. I confiscated them from your cell, yes.

19 Q. And none of the other people that were in the cell took  
20 those documents?

21 A. No. I, I confiscated the documents.

22 Q. You confiscated them?

23 A. Yes.

24 Q. So you know what they were?

25 A. I just stated, I don't know what they were. I wrote

1 what they said. I wrote down, legal papers belonging to  
2 Inmate Gary Banks.

3 Q. And you based that on the fact that Mr. Banks signed a  
4 declaration; correct?

5 A. No, I did not. I didn't see no signature on it or  
6 anything like that. What I saw is exactly what this looks  
7 like.

8 MR. JACOBS: Your Honor --

9 THE COURT: Just a second. Just listen to the  
10 question, and answer the question. Your counsel will be able  
11 to follow-up with you.

12 MR. BRADLEY: Your Honor, he was providing an answer  
13 that wasn't a, yes, or, no, answer. So, he should be entitled  
14 to finish his answer.

15 THE COURT: Okay. Finish your question, then.

16 THE WITNESS: My answer?

17 THE COURT: Yes.

18 BY MR. JACOBS:

19 A. What I confiscated, what I noticed on it is almost  
20 exactly what this has here, Andre Jacobs, Plaintiff versus PA  
21 Department of Corrections.

22 What I confiscated out of your cell said, Gary Banks  
23 versus PA Department of Corrections.

24 MR. JACOBS: Your Honor, I asked him, did he  
25 confiscate the document based on Mr. Banks' signature being on

1 it.

2 THE COURT: Okay. Just listen to the question.

3 MR. JACOBS: That's a, yes, or, no, question.

4 THE COURT: Listen to the question. Repeat your  
5 question again.

6 BY MR. JACOBS:

7 Q. Did you confiscate the document based on Mr. Banks'  
8 signature being on it?

9 A. No.

10 Q. Did you confiscate the document based on it being a  
11 declaration?

12 A. No.

13 Q. And were you present for the testimony of  
14 Defendant Giddens?

15 A. Yes, I was.

16 Q. Do you remember Defendant Giddens' testimony that his  
17 name was in the documents?

18 A. Do I remember saying that his name was in the  
19 documents?

20 Q. Do you remember him saying that.

21 A. I don't remember. Not really, no.

22 Q. That was the reason you took the documents?

23 A. No..

24 Q. You didn't take the documents because you thought it  
25 was contraband.

1 A. No, I took them because they were contraband.

2 Q. You took it because it was a declaration. That was the  
3 title of the page, a declaration, and that was the basis of  
4 you taking it?

5 A. Is that a question or a statement?

6 Q. I'm asking you.

7 A. No. I had confiscated the items because it was  
8 contraband. I don't know who else's names was in it, I didn't  
9 read it.

10 Q. And in fact, any time you found a prisoner's  
11 declaration within the LTSU, you confiscated it? That was the  
12 practices in LTSU, confiscating declarations?

13 A. If that's a question, the answer is, no.

14 Q. And that was because the declaration is -- do you know  
15 what a declaration is?

16 A. No, I don't. I'm not a lawyer. I don't know what a  
17 declaration is.

18 Q. But have you heard testimony as to what a declaration  
19 is?

20 A. As to what is declaration is?

21 Q. Have you heard the testimony?

22 A. As to what a declaration is?

23 Q. Yes.

24 A. I don't remember any testimony explaining what a  
25 declaration is, no.

1 Q. Okay. So, it wouldn't matter to you whether or not a  
2 declaration is a legal document, or a witness statement, if  
3 another prisoner's name is on it, it is?

4 A. What do you mean by that? I mean, that's kind of a  
5 wide statement.

6 Q. So, if you find a declaration, being as though you  
7 don't know what a declaration is, if another prisoner's name  
8 is on it, that's basis enough for you to take it?

9 A. Not, not -- never. No, not just for having a person's  
10 name on it. But that paper clearly stated, Gary Banks versus  
11 the Department of Corrections.

12 Q. So, the only thing you're looking for is documents  
13 indicating that prisoners are witnessing corruption taking  
14 place in the LTSU?

15 A. No, that is not what I'm looking for.

16 Q. When you do these cell searches, you're reading these  
17 documents in prisoners' cells.

18 A. No, I don't read documents.

19 Q. And you're searching for evidence to disprove the  
20 claims of prisoners?

21 A. No.

22 Q. And after you take these documents, you did a  
23 confiscation slip; right?

24 A. Or taking what documents?

25 MR. BRADLEY: Excuse me.

1 Q. Out of the cell search. You conduct the cell search.

2 MR. BRADLEY: Excuse me, Your Honor, is he asking  
3 generally, or is he asking about what happened  
4 September 16<sup>th</sup>, 2003?

5 MR. JACOBS: I'm asking the policy.

6 THE COURT: Refer to the time frame for that  
7 opinion.

8 BY MR. JACOBS:

9 Q. I'm talking with the policy, how it's supposed to be  
10 done.

11 A. At that time, yes.

12 Q. When you all take a document from a prisoner, or any  
13 type of property that you label contraband, did you issue a  
14 confiscation slip; correct?

15 A. If I take property that is contraband, yes, I issue a  
16 slip.

17 Q. And then, you destroy the material?

18 A. No, I don't destroy them go.

19 Q. You destroy the material, so then, there's no way to  
20 prove what the document was?

21 MR. BRADLEY: Your Honor, I'm going to object,  
22 because he was directing that question to this defendant. He  
23 was -- he used the term, "you all". He was directing it to  
24 any number of people.

25 THE COURT: Refer to what -- if you wouldn't mind,

1 Mr. Jacobs, direct the question to this witness, about what  
2 his conduct, or any other conduct that's pursuant to a policy.

3 MR. JACOBS: I'm referring not just to him, but his  
4 observation, too, concerning the practices.

5 THE COURT: Yes.

6 BY MR. JACOBS:

7 Q. When I say "you all", I mean you, Defendant Giddens  
8 Defendant Chirico, and other LTSU officers.

9 A. Okay. Can you repeat the whole question, though?

10 Q. When you confiscate this material, you destroy it.

11 A. No, I don't.

12 Q. And you destroy it, because then, there's no way to  
13 prove what the documents were?

14 A. No, that's not true at all.

15 Q. When you issued this misconduct to me on  
16 September 16<sup>th</sup>, 2003, you were aware of the consequences if  
17 I was found guilty of the charges you alleged; correct?

18 A. Was I aware of the consequences?

19 Q. About my fate at the hearing examiner.

20 MR. BRADLEY: Excuse me, Your Honor. He's not being  
21 able to finish the response.

22 MR. JACOBS: He asked me to clarify. I was  
23 clarifying.

24 THE COURT: Be careful to permit the time for the  
25 response, before you go on.

1 MR. JACOBS: Exactly. He asked me to clarify the  
2 question. I was trying to clarify for him.

3 THE COURT: Okay. Then, clarify the question.

4 BY MR. JACOBS:

5 Q. Do you know, when you issue a misconduct certain  
6 charges carry certain penalties; correct?

7 A. Yes. The penalties are up to the hearing examiner.  
8 But, yes, charges do carry a penalty; yes.

9 Q. Each charge carries a penalty?

10 A. Not always.

11 Q. Each charge can carry a penalty if --

12 A. They can, yes.

13 Q. And each charge can yield up to 90 days per charge?

14 A. I believe that's what it is.

15 Q. That was the policy at the time in question?

16 A. I don't recall exact policy at the time, but, yeah,  
17 generally.

18 Q. And a misconduct can be used as a basis for denial  
19 parole?

20 A. I have nothing to do with the parole system.

21 Q. Okay. But a misconduct does adversely affect a  
22 prisoner?

23 A. A misconduct affects a prisoner? Yeah, it affects the  
24 prisoner.

25 Q. In a bad way?

1 A. I wouldn't say in a bad way, but you impose sanctions  
2 for disobeying the rules, which is why you get a misconduct.

3 Q. So you're disciplined?

4 A. You've given sanctionss.

5 Q. Okay. Now, for the purpose of this misconduct, you  
6 issued the misconduct because you wanted me to be punished?

7 A. No. I issued a misconduct because I found contraband  
8 in your cell.

9 Q. And the process that you initiated under the DC-ADM 801  
10 provides for sanctions to be imposed as a result of the  
11 misconduct that you wrote; correct?

12 A. Yes. I believe it does, yes.

13 Q. And this was your way of trying to punish me for having  
14 a declaration against Defendant Giddens?

15 A. No, sir.

16 Q. And you use the misconduct system to erroneously label  
17 legal documents "contraband"?

18 A. No.

19 Q. And you used the misconduct system to punish me for the  
20 possession of legal documents that wasn't contraband?

21 A. No, sir.

22 Q. And you knew that a declaration wasn't contraband?

23 A. I knew a declaration wasn't contraband.

24 Q. You knew that at this time; didn't you?

25 A. I already testified that I don't know what a

1 declaration is. What I testified is the paperwork said, Gary  
2 Banks versus the Department of Corrections.

3 Q. Were you here for the testimony of Michael Edwards?

4 A. For who?

5 Q. Michael Edwards.

6 A. Michael Edwards. Yes, I was.

7 Q. Do you know him?

8 A. Not really, no.

9 Q. Do you remember his testimony when I asked him, did he  
10 remember someone named Lynch from being in the hole?

11 A. I remember you asked him that question.

12 Q. Do you remember what his answer was?

13 A. He says he remembers a Lynch, but he doesn't remember  
14 the first name, and there's more than one Lynch that works at  
15 SCI Pittsburgh.

16 Q. Do you remember his testimony that there was a Lynch  
17 that worked on A-100 or A-200 in the year 2001 or 2002?

18 A. I think he said in the year 2000.

19 Q. Did you work in A-100 or A-200 in the year 2001 or  
20 2002?

21 A. No, I didn't. I was working in A-300 in 2002.

22 Q. What about 2001?

23 A. From July of 2001, I wouldn't be permitted to work in  
24 RHU, because I was still a trainee.

25 Q. At no time did you work in RHU at SCI Pittsburgh?

1 A. I'm sure a day or two here and there I probably did  
2 work in A-1 or A-2, but I wasn't assigned to A-1 or A-2  
3 permanently.

4 Q. What time frame would that have been?

5 A. I have no idea.

6 Q. You don't remember?

7 A. No, I don't.

8 Q. You stated the documents you took on September 16<sup>th</sup>,  
9 2003 were held in the armory?

10 A. In a locker in the armory, yes.

11 Q. On the LTSU unit?

12 A. Yes.

13 Q. And then, after the disposition of the misconduct  
14 hearing, what happened to them?

15 A. It would have been taken to the Security Office.

16 Q. By who?

17 A. Probably by the search team, or the security team.

18 Q. So, someone not within the LTSU unit?

19 A. It's possible, but I don't believe it was; no, sir.

20 Q. But what there a policy or somebody responsible for  
21 handling contraband?

22 A. Who it is specifically, I don't know.

23 Q. You don't know? But it wouldn't be the person that  
24 took it?

25 A. The person that took the contraband from A-300 to the

1 Security Office?

2 Q. The person that initially took the contraband.

3 A. Well, that was me. I took the contraband initially.

4 Q. Okay. So, it wouldn't be you?

5 A. Once I write the confiscation slip and I place the  
6 contraband in the locker and I secure it with a lock, then,  
7 after that point, no, I have nothing else to do with it,  
8 because then the hearing examiner takes it for his hearing,  
9 and it should be placed back in the locker, and then, taken to  
10 Security.

11 Q. So, somebody else's responsibility?

12 A. After that point in time, yes.

13 Q. There are different types of searches; correct?

14 A. Yes.

15 Q. What types of searches do you have?

16 A. There's three different types of searches. There's a  
17 general search, a random search, and an investigative search.

18 And we also have another thing known as fire and  
19 security checks.

20 Q. And what type of search was conducted on  
21 September 16<sup>th</sup>, 2003?

22 A. Specifically, I don't remember, but it would have been  
23 either a random or a general.

24 Q. But it wasn't investigative?

25 A. No.

1 Q. Showing you what's been marked as Plaintiff's Exhibit  
2 No. 7-B. You recognize that document; correct?

3 A. Yeah. That's the confiscated items receipt that I  
4 wrote.

5 Q. Do you see in the section where it identifies what type  
6 of search what conducted?

7 A. Says, LTSU cell search.

8 Q. Over to the left.

9 A. There's three blocks. It says, random search, general  
10 search, and investigative search.

11 Q. And none of them are marked; are they?

12 A. No, they are not.

13 Q. Is that typical?

14 A. Typical?

15 Q. Yes.

16 A. I don't know.

17 Q. Is that box supposed to be filed in?

18 A. It should be filed in, but it doesn't necessarily have  
19 to be fill in, no.

20 Q. But it's not filled in in this particular case?

21 A. No, it's not filled in in this case. And the reason I  
22 didn't fill that in is because I indicated in the comments --

23 MR. JACOBS: Your Honor --

24 THE COURT: Just a second.

25 Just answer the question. Your counsel will be able

1 to follow-up with you.

2 BY MR. JACOBS:

3 Q. You stated on direct examination that no one directed  
4 you to take these documents on September 16<sup>th</sup>, 2003.

5 A. No one directed me to take the documents, no.

6 Q. But Defendant Giddens did approve of you taking those  
7 documents; didn't he?

8 A. To my knowledge, I didn't need his approval to  
9 confiscate the items.

10 Q. Did you show the documents to Defendant Giddens?

11 A. I may have, but I'm not 100 percent sure.

12 Q. But you didn't need his approval; did you?

13 A. No, I don't need his approval to confiscate contraband.

14 Q. But you thought that it was important that he see what  
15 was in those documents; didn't you?

16 A. No, I didn't.

17 Q. You didn't think it was important?

18 A. No.

19 Q. Were you present for Defendant Giddens' testimony?

20 A. Yes, I was.

21 Q. Do you remember his testimony that he showed you those  
22 documents -- that you showed him the documents?

23 A. Word for word, I don't remember his testimony.

24 Q. Do you remember his testimony that when you showed him  
25 the documents, he seen his name in those documents?

1 A. Um, I don't recall that, no.

2 Q. That was the reason you showed those documents to him;  
3 isn't it?

4 A. What was the reason? You're making a statement. If  
5 you're going to ask me a question, I'll answer it, but you're  
6 making a statement.

7 Q. That was the reason you showed him the document; isn't  
8 it?

9 A. What was the reason?

10 Q. Because his name was in them.

11 A. No, it's not.

12 Q. You stated that you were generally aware that I file  
13 grievances within the LTSU?

14 A. Yes.

15 Q. And that would have been against the officers?

16 A. I believe I testified I don't know who you filed them  
17 against or what you file them for. I'm just aware that you  
18 filed grievances.

19 Q. You also testified that you wouldn't be made aware of  
20 whether the grievance was filed against you. You remember  
21 saying that?

22 A. I don't remember saying that, no.

23 Q. You said you have no way of knowing if a grievance was  
24 filed against you in particular?

25 A. Well, I mean, at the point in time when a grievance is

1 picked up from your cell or whatever, no. I don't open them  
2 up and look at them. If a grievance is filed on me by you, or  
3 any other inmate, and the lieutenant that's investigating the  
4 grievance chooses to ask me a question about the grievance,  
5 then, he can do that, and that's how I would know about it.  
6 But just somebody coming to me and saying, oh, a grievance was  
7 filed on you, no.

8 Q. But you are advised if a grievance is filed against  
9 you?

10 A. No. Not always, no.

11 Q. Not always?

12 A. Not always, no.

13 Q. So, if a prisoner filed a grievance against you that  
14 says that you did something wrong, are you saying that the  
15 person investigating the grievance, the complaint, might not  
16 never come and talk to you about it?

17 A. They may or may not. I mean, I'm not the person  
18 investigating the grievances. I don't know how they do their  
19 investigation.

20 What I said is, if I'm a part of the grievance, then, I  
21 would suppose, yes, they can ask me questions about the  
22 grievance, and then, my involvement, or whatever the case may  
23 be. I don't know how they investigate grievances. That's not  
24 part of my job.

25 Q. Has a prisoner ever filed a grievance against you

1 during the relevant time frame for seizing or destroying legal  
2 property?

3 A. The relevant time frame, you mean from the year --

4 Q. The year 2003.

5 A. To when; to now?

6 Q. No later than the year 2003, and prior to that time.

7 A. Prior to 2003? Phew. That's a long time ago. I  
8 really don't remember.

9 Q. You don't remember.

10 A. No.

11 Q. You don't remember ever being involved in having to  
12 take a prisoners' legal property?

13 A. Take an inmate's legal property?

14 Q. Yes.

15 A. If it wasn't contraband, no.

16 Q. If you labeled it "contraband."

17 A. If something is contraband and I see it, then, I do  
18 confiscate it.

19 Q. You could label anything contraband, if you want; can't  
20 you?

21 A. No, I can't.

22 Q. Anything in the cell you could label contraband, if you  
23 want?

24 A. No, I can't.

25 Q. You can come in the cell, under DOC policy, and label a

1 Bible contraband, if you want; can't you?

2 A. No, I can't.

3 Q. Anything in that cell, if you write it's tampered, it's  
4 tampered with, you -- can't you take that?

5 A. If property in your possession is tampered with, then,  
6 yes, it can be considered contraband.

7 Q. Altered; right?

8 A. Altered, tampered with, destroyed, broken, whatever.

9 Q. Altered. Altered. What would be an altered book?

10 A. Um, altered book could be, say you had a book and you  
11 tore a bunch of pages, or tore the bindings and the covers off  
12 of them. That's altered.

13 Q. And you would label that contraband?

14 A. Yes, I would.

15 Q. And you know, anything you label contraband is going to  
16 be processed at contraband?

17 A. Not necessarily, no.

18 Q. If you write on the misconduct -- there's going to be a  
19 misconduct hearing under the label of contraband; correct?

20 A. Not necessarily, no.

21 Q. Do you agree with me that this was a tactic that you  
22 used in the LTSU to take prisoner's legal property?

23 A. No, I do not agree.

24 Q. Because you know that the that was the only way that  
25 you could take a person's legal property?

1 A. No, I do not agree with that.

2 Can I finish answering the question? No, I do not  
3 agree with that.

4 THE COURT: You need to try not to talk over each  
5 other, because the court reporter cannot get that down. You  
6 need to wait for the witness to finish the answer, and then,  
7 you can continue with the next question.

8 MR. JACOBS: No further questions.

9 REDIRECT EXAMINATION

10 BY MR. BRADLEY:

11 Q. Mr. Jacobs had asked you about going in in these cell  
12 searches and specifically looking just for legal materials in  
13 order to confiscate them, et cetera.

14 When you do these cell searches, what types of things  
15 are you looking for?

16 A. Um, there's numerous things that we're looking for.  
17 Um, you're looking for, as Officer Chirico testified, you're  
18 looking for weapons. We look for, like in the shower, like  
19 feces and urine in their cell in cups or whatever to try to  
20 throw it on us. You're looking for any of their like sheets,  
21 blankets that we issue them, checking to see if they have  
22 enough of the blankets, what they are issued, or if they have  
23 too much, or if the sheets and blankets are torn.

24 We're searching the structure of the cell, the walls,  
25 the lights, the doors, the sink, the toilet, everything, to

1 make sure everything is intact, make sure it's solid, make  
2 sure it's working, make sure there's no tampering to it.

3 Contraband is a wide -- there's a wide variety of  
4 contraband that can be found. Looking for extra medication  
5 that they hoard and keep in their cells.

6 Q. So, even though the property of the LTSU inmates was  
7 limited, there were still things beyond legal property you  
8 would be looking for?

9 A. Oh, yes.

10 Q. I want to talk to you for a few minutes about the  
11 process of issuing a misconduct.

12 Is your testimony that during the cell search you found  
13 these two pieces of paper which you determined to be  
14 contraband?

15 A. Yes.

16 Q. Again, to be clear, the only reason you determined  
17 these to be contraband is because it appeared to be the  
18 property of another inmate; is that correct?

19 A. Yes. It's stated on on it, Gary Banks versus  
20 Department of Corrections.

21 Q. That seizure had nothing to do with the fact it was  
22 Andre Jacobs in the cell, or that he filed grievances, or that  
23 he had file a lawsuit?

24 A. No, sir.

25 Q. Take us through the steps, from the time you picked up

1 those pieces of paper to the point where you actually wrote  
2 down on paper the misconduct that has been previously  
3 identified, and how that was subsequently given to Mr. Jacobs.

4 A. Well, it's start at the cell. I mean, we go to his  
5 cell. We order the inmate to strip search. He takes off all  
6 his clothes, hands us the clothes through the food aperture  
7 that we open and give them their food trays and that, things  
8 we give them. Essentially, they are done through the food  
9 aperture. We do a search of the inmate's body, give him the  
10 clothes back. He gets dressed.

11 Q. If I could just interrupt you there. This strip  
12 search, is it a physical search?

13 A. No. We do it like visibly, through the cell door.

14 Q. So, is that -- the door is between you and the inmate,  
15 so you don't physically have your hands on the inmate at this  
16 point?

17 A. No, sir. No.

18 Q. Continue, please.

19 A. And once all that is done, he's handcuffed behind his  
20 back. We have the door open. He's removed from the cell.  
21 Usually one or two officers stays outside the cell with him  
22 and stands next to him, make sure he doesn't go anywher, try  
23 to assault anybody or anything like just, to make sure that  
24 the inmate is secure where he is at.

25 As Lieutenant Giddens testified, yes, he usually was on

1 the pod when we do cell searches, just as the supervisor, to  
2 watch over the whole situation, to make sure nothing did  
3 happen.

4           Once that's done, then I know this particular time,  
5 like I went in the cell. I started searching the cell, and  
6 sitting on Inmate Jacobs' desk in his cell there was a, a  
7 white State envelope, State envelopes that they issue to them  
8 to mail letters. And I remember written on that envelope it  
9 had, Gary Banks CT8731, and I picked up the envelope and I  
10 asked Inmate Jacobs, I said, why do you have Gary Banks'  
11 envelope in here?

12           And do you want me to say what he said? Because there  
13 was some vulgar comments.

14 Q.        You can say what you heard.

15 A.        When I asked him why he had Gary Banks' property in his  
16 cell, basically response I got was, "Fuck you, pussy." So,  
17 okay. I realize I'm not going to get nowhere discussing the  
18 matter with him. So, then, I open up the envelope, and there  
19 was two sheets of paper in the envelope. I opened them up,  
20 and that's when I noticed on that first sheet of paper, real  
21 big, in bold print, said, Gary Banks -- Garry Banks versus the  
22 Department of Corrections.

23           I didn't read it any further, because like it's been  
24 stated a couple times here, we're not allowed to read the  
25 mail. We just review it to see if anything stands out. That

1 stood out to me, so I took the paperwork.

2           We continued with the cell search, obviously, checked  
3 the physical layout of the cell, the walls, everything, like I  
4 said. Within his cell he also has one box of property, and in  
5 that box of property contains his personal property and his  
6 legal property. We searched through that entire box. We even  
7 go as far as to take the box apart, search through the box.  
8 They like hiding things in the cracks of the boxes. We search  
9 pretty much everything in the cell.

10           And once the cell search was done, we put him back in  
11 the cell, unhand -- well, secured the door, and then,  
12 un-handcuff him. That's when I went to the Sergeant's office.  
13 I wrote the confiscation slip for the items. I wrote the  
14 misconduct. I do believe that's when I turned the misconduct  
15 and the confiscation slip in to the shift commander. I do  
16 believe that I had the items with me to show to the shift  
17 commander, that it stated Gary Banks versus Department of  
18 Corrections.

19           And then, afterward, I took it back up and I put it --  
20 I secured it in the locker I talked about in the armory. I  
21 put it in the metal locker. I put a lock on it. That's what  
22 I did with it.

23 Q.        So, you're -- and maybe to compare this for the jury's  
24 experience, this isn't a situation like a police officer pulls  
25 someone over and writes them a ticket. You don't walk around

1 with the misconduct pad and write the misconducts and give  
2 them to the inmates right then and there; do you?

3 A. No, not at all.

4 Q. In fact, even though you're the one that issued the  
5 misconduct, you're not the one that actually delivers the  
6 report to the inmate; is that correct?

7 A. No. If you're the writer of the misconduct, you're not  
8 permitted to be the server. It has to be somebody else to  
9 sign on the -- where it says, signature of person serving  
10 notice, it has to be someone other than the writer of the  
11 misconduct to sign that, and actually physically take it to  
12 the inmate's cell to serve it to him.

13 Q. That's on the lower right-hand corner of what's been  
14 marked as Plaintiff's Exhibit 7-A?

15 A. Yes, sir.

16 Q. Does that indicate who served the misconduct in this  
17 case?

18 A. It says R. Collings, CO1.

19 Q. So, would it be fair to say, from the time you leave  
20 the cell, went to your office, write the confiscation slip and  
21 wrote the misconduct report, you would have had enough time to  
22 read through those two pages of legal documents?

23 A. I would have had enough time to read through it.

24 Q. You would have had enough time?

25 A. I would have had enough time, yeah.

1 Q. And your testimony is that you didn't read through  
2 them?

3 A. No. We're not permitted to read through it. So, no, I  
4 didn't read it.

5 Q. In fact, what you did do was create two written  
6 documents regarding that seizure; is that correct?

7 A. Yes, sir.

8 Q. And both of those written documents were then provided  
9 by somebody else to the inmate?

10 A. Yes, sir.

11 MR. BRADLEY: That's all the questions I have.

12 Thank you, Your Honor.

13 RECROSS EXAMINATION

14 BY MR. JACOBS:

15 Q. You stated when you conduct these cell searches, you're  
16 looking for weapons.

17 A. That's one of the items of contraband I'm looking for,  
18 yes.

19 Q. Feces?

20 A. Yes.

21 Q. Urine?

22 A. Yes.

23 Q. Torn blankets?

24 A. Yep.

25 Q. Make sure the toilet is working?

1 A. Yes.

2 Q. Sink, all that is working?

3 A. Yes.

4 Q. You need to read a person's legal documents to see if  
5 it's a weapon in the cell?

6 A. Do I need to read the legal documents?

7 Q. Yes.

8 A. No, I don't.

9 Q. Do you need to review the legal documents to see if  
10 there's a weapon in the cell?

11 A. Actually, yes.

12 Q. Do you need to review a legal document to see if  
13 there's urine in this cell?

14 A. In a way, actually, yes.

15 Q. Do you need to review a legal document to see if feces  
16 are in the cell?

17 A. Yes. It's been known for inmates to hide things within  
18 their paperwork there, their property, books; yes. I have to  
19 review every piece of paper in that cell.

20 Q. You have to read what was in the document to discover  
21 these things; huh?

22 A. No, I don't have to read what's in the document, no.

23 Q. Okay. And the misconduct that you issued to me on  
24 September 16<sup>th</sup>, 2003, is that an accurate statement of what  
25 you remember taking place?

1 A. The misconduct I wrote you?

2 Q. Yes.

3 A. Yes.

4 Q. Is that accurate?

5 A. That is what I wrote, yes.

6 Q. Is it accurate?

7 A. I just said, yes.

8 Q. Are the charges accurate?

9 A. Refusing an order, possession of contraband, borrowing  
10 property. Yes.

11 Q. Now, you just testified that in the course of that cell  
12 search, you asked me about those documents, and I said, "Fuck  
13 you"?

14 A. You said, "Fuck you, pussy"; yes.

15 Q. Fuck you, pussy. Nowhere in that document does it say  
16 that; does it?

17 A. No, it don't.

18 Q. And under the DOC policy, wouldn't that be using  
19 abusive language?

20 A. Yes, it would. But if can I explain, there's some  
21 other circumstances with that, though.

22 Q. And don't you think that you inquiring why I had these  
23 documents would be important for ownership?

24 A. No, it wouldn't, because they clearly stated that they  
25 was Gary Banks'.

1 Q. So, what's the point of asking me why did I have the  
2 documents, if they were going to be contraband regardless?

3 A. Why not ask you? I mean, you may tell me the truth and  
4 say, well, yeah, it's his.

5 You always ask, any time you find contraband in the  
6 inmate's cell, you ask what it is, why they have it, and where  
7 they get it from.

8 Q. The truth is, you never asked me why I had the  
9 documents; correct?

10 A. No, that's not the truth.

11 Q. The truth is, I never said, "Fuck you, pussy"?

12 A. No, that's not the truth.

13 Q. Because if I said it, you would have it in the  
14 misconduct; correct?

15 A. Not necessarily, no.

16 Q. Isn't that what the misconduct is for?

17 A. Yes, it is. That's exactly what it's for.

18 Q. As a Department of Corrections employee, aren't you  
19 required to report incidents accurately?

20 A. Yes, I am, but if I wrote a misconduct every single  
21 time an inmate used --

22 MR. JACOBS: Your Honor.

23 THE COURT: Just a second. You know, just respond  
24 to the question.

25 THE WITNESS: Yes, ma'am.

1 BY MR. JACOBS:

2 Q. You stated that the documents that you took on  
3 September 16<sup>th</sup> were inside of an envelope?

4 A. When I saw them on your desk, they was inside of an  
5 envelope, yes.

6 Q. Then, on the confiscation slip, you wrote, two pages of  
7 legal statements?

8 A. Yes, I did.

9 Q. Belonging to Inmate Gary Banks?

10 A. Yes, I did.

11 Q. Did that include the envelope?

12 A. No, it does not.

13 A. You just made the envelope up just now; didn't you?

14 A. No.

15 MR. JACOBS: No further questions.

16 REDIRECT EXAMINATION

17 BY MR. BRADLEY:

18 Q. Why didn't you charge Mr. Jacobs with the abusive  
19 language charge on September 16<sup>th</sup>, 2003?

20 A. Well, to be quite honest about it, on that unit, being  
21 the nature of the inmates that was on the unit, um, be quite  
22 honest, if I wrote up every inmate every time they used some  
23 abusive language to me, I probably literally would have wrote  
24 100 misconducts a day.

25 I mean, the truth of the matter is, sometimes, you

1 know, when you're doing the cell search, the important thing  
2 is you found the contraband. So, I document the contraband.  
3 The fact he use some abusiv language, to me, I mean,  
4 literally, if I wrote up everybody that used abusive language  
5 to me on that unit, I would have wrote 100 misconducts a day,  
6 too.

7 MR. BRADLEY: Nothing further, Your Honor. Thank  
8 you.

9 RECROSS EXAMINATION

10 BY MR. JACOBS:

11 Q. But you took the time out to write, what was that,  
12 three different charges?

13 A. I believe I put three different charges on it, yes.

14 Q. And you took the time out to write what you say took  
15 place on September 16<sup>th</sup>, 2003; correct?

16 A. Regarding the contraband, yes.

17 MR. JACOBS: No further questions also.

18 MR. BRADLEY: That's all, Your Honor. Thank you.

19 THE COURT: Okay. The witness is excused. This  
20 will be a good time for our afternoon recess.

21 Would everyone please rise and excuse the jury.

22 (Whereupon, jury retires.)

23 THE COURT: We'll be in recess.

24 (Whereupon, court recessed at 2:55 p.m.)

25 \* \* \* \* \*

1 (Whereupon, court reconvened.)

2 THE COURT: Please be seated.

3 Call your next witness.

4 MR. BRADLEY: Yes, Your Honor. The defendants call  
5 Thomas McConnell to the stand.

6 THE COURT: The witness could please come forward,  
7 stand and be sworn.

8 THE COURT: Thank you. Please take the witness  
9 stand.

10 \* \* \* \* \*

11 THOMAS EDWARD McCONNELL, a witness herein,  
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BRADLEY:

15 Q. Good afternoon, sir. Would you state your name, and  
16 spell your last name for the record, please.

17 A. Good afternoon. My name is Thomas Edward McConnell.  
18 Last name is spelled, M, as in Mc, c-C-O-N-N-E-L-L.

19 Q. Are you currently employed?

20 A. No, sir. I'm retired.

21 Q. And where are you retired from?

22 A. From the State Correctional Institution in Pittsburgh.

23 Q. And were you an employee of the Department of  
24 Corrections there?

25 A. Yes, I was.

1 Q. How long had you worked for the Department of  
2 Corrections?

3 A. 25 years.

4 Q. And what was your position when you retired?

5 A. At the time of my retirement, I was a CO4, Corrections  
6 Officer 4, or A captain.

7 Q. And What was your assignment at that time?

8 A. At the time of my retirement I was the night shift,  
9 10:00 p.m. to 6:00 a.m., shift commander.

10 Q. And prior to holding that position, what position did  
11 you hold?

12 A. Beginning with my employment in December of 1979, I  
13 started as a Corrections Officer 1.

14 In 1988, I was promoted to the rank of sergeant.

15 In 1991, I was promoted to the rank of lieutenant.

16 In 1996, I was promoted to the rank of captain.

17 From May of 1997 until October of 1999, I was the  
18 security captain.

19 And then, again, from May of 2003 through October of  
20 2004, I was the security captain.

21 Q. And those positions as security captain were at  
22 SCI Pittsburgh?

23 A. Yes, sir.

24 Q. And could you tell the jury just briefly what your  
25 duties would be as the security captain?

1 A. The security captain in a correctional institution has  
2 a wide range of responsibilities. They include conducting  
3 inspections of all the security aspects of the facility,  
4 including electronic equipment, security equipment, cameras,  
5 et cetera.

6 They also conduct internal investigations of inmate  
7 activity and/or staff activity.

8 They are the liaison officer between a number of law  
9 enforcement agencies, such as the Pennsylvania State Police,  
10 the FBI, the Secret Service, and after 2001, the joint  
11 terrorism task force.

12 Q. Do you know the plaintiff in this case, Andre Jacobs?

13 A. Not very well.

14 Q. Do you know when you had first became aware of  
15 Mr. Jacobs, or learned of his existence?

16 A. At this time, I would say my first recollection of  
17 Mr. Jacobs was in September of 2003.

18 Q. And is that related to the events that we're here in  
19 court for?

20 A. Yes, sir, it is.

21 Q. At that time, did you have prior knowledge of  
22 Mr. Jacobs' grievance activity?

23 A. No, sir, I didn't.

24 Q. Were you aware at that time that he had filed and was  
25 engaged in litigation of a lawsuit against DOC personnel from

1 SCI Pine Grove?

2 A. No, I didn't.

3 Q. Could you please explain to the jury how you came to be  
4 involved in this matter that we are here for?

5 A. On or about September 17<sup>th</sup>, 2003, I received a  
6 communication from Mr. Jacobs in the form of an Inmate Request  
7 to Staff. Basically was a handwritten note to me. Actually  
8 was addressed to security, not to me specifically. But it was  
9 addressed to security.

10 And in that document Mr. Jacobs stated that staff  
11 members in the LTSU had stolen his legal work from  
12 Inmate Lyons. He then advised me I was in violation of the  
13 law and I was -- and denying him access to Courts, and that he  
14 wanted his documents back.

15 Q. Putting up a document previously marked as Plaintiff's  
16 Exhibit 3. Is this the document you were just referencing?

17 A. Yes, sir, it is.

18 Q. And in a response to what Mr. Jacobs had written, did  
19 you provide a response to him?

20 A. Yes, sir I did.

21 Q. And does that appear in the bottom portion of this  
22 document?

23 A. Yes, it does.

24 Q. Is that your name and signature on the bottom of the  
25 document?

1 A. Yes, it is.

2 Q. And could you read to the jury what you wrote?

3 A. I wrote, Mr. Jacobs, nobody, certainly not  
4 Lieutenant Giddens or myself, is trying to violate your rights  
5 to access to the Courts. The fact is, an officer found some  
6 items belonging to someone other than Lyons in Lyons' cell, so  
7 they confiscated them. I will review the matter with  
8 Lieutenant Giddens, and if appropriate, the items will be  
9 returned to you. I don't -- I don't think I need remind you  
10 that this does technically constitute loaning or borrowing  
11 property.

12 And then, I signed and dated it.

13 Q. Do you have any recollection of doing anything after  
14 September 17<sup>th</sup>, after you responded to the inmate request?

15 A. No, sir, I don't.

16 Q. Do you know if you ever talked to Lieutenant Giddens?

17 A. I don't have any direct recollection of doing so.

18 However, I would have probably at least asked  
19 Lieutenant Giddens what this was in reference to. I think he  
20 may have alluded to the fact that there were pending  
21 misconducts.

22 Q. Would you have recalled if Lieutenant Giddens had asked  
23 you to do anything in violation of Department of Corrections  
24 rules, policies or the Code of Ethics with regard to the  
25 materials that were confiscated from Inmate Lyons?

1 A. Yes, I would have.

2 Q. And what would you have done?

3 A. I would have advised him at this time that any such  
4 request was inappropriate, and then, I would have documented  
5 that to my supervisors.

6 Q. And that didn't happen; did it?

7 A. No, sir.

8 Q. Again, just so I'm clear, following the providing the  
9 written response to Mr. Jacobs, did you do anything; did you  
10 have any involvement in the matters that we're here in court  
11 for?

12 A. I have no direct recollection of that, sir.

13 Q. Do you know what happened to the materials?

14 A. No, I do not.

15 Q. Did you direct that anything be done with the  
16 materials?

17 A. No, I did not.

18 Q. Do you know if you ever saw the materials?

19 A. At this point in time, I don't recall having seen them.

20 Q. Other than what you've identified with  
21 Lieutenant Giddens, did you have any other conversations with  
22 any of the other defendants in this matter regarding Mr. Jacobs,  
23 regarding any plan or agreement to retaliate against  
24 Mr. Jacobs for filing grievances and lawsuits?

25 A. No, I did not.

1 Q. Did you ever direct anyone, including defendants, or  
2 including other members of the Department of Corrections, to  
3 take any retaliatory action against Mr. Jacobs, or any action  
4 to deprive his access to courts?

5 A. No, I did not.

6 Q. Did you enter into any agreement, whether explicit or  
7 implicit, with the other defendants to take any retaliatory  
8 action against Mr. Jacobs, or any action to deprive him of his  
9 access to courts?

10 A. No, I did not.

11 MR. BRADLEY: No further questions. Thank you.

12 CROSS EXAMINATION

13 BY MR. JACOBS:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. As security captain, do you also review the complaints  
17 of prisoners?

18 A. On occasion, I did.

19 Q. Do you recall any specific complaints coming from  
20 persons in the LTSU?

21 A. I don't recall specifics, although, I'm sure there were  
22 some.

23 Q. But you don't remember the nature of them?

24 A. They probably varied, depending on the particular  
25 individual who might have submitted them.

1 Q. Do you recall any complaints about a policy or practice  
2 of guards in the LTSU seizing and destroying legal property?

3 A. No, I do not.

4 Q. You recall any complaints of guards in the LTSU  
5 retaliating against prisoners for exercising their First  
6 Amendment rights?

7 A. No, I do not.

8 Q. But if those complaints were being made, are those the  
9 type of complaints that would come across your desk?

10 A. As I stated previously, they may have.

11 Q. But you don't remember?

12 A. I don't recall them.

13 MR. JACOBS: No. 3.

14 BY MR. JACOBS:

15 Q. Referring to Plaintiff's Exhibit No. 3, upon you  
16 receiving that request, did you speak to anybody concerning  
17 the documents?

18 A. The only person I would have spoken to, in my  
19 recollection, would have been Lieutenant Giddens, and that  
20 would have been merely to ask what this was in reference to.

21 Q. If I recall correctly, you stated that he may have said  
22 that there were misconducts pending regarding the matter?

23 A. I believe that's what I said.

24 Q. Meaning more than one misconduct?

25 A. I believe that's what I said.

1 Q. Do you recall -- were you present for the testimony in  
2 this case?

3 A. Yes, I was.

4 Q. Do you recall any testimony concerning a misconduct  
5 being issued for the documents being referred to on this form?

6 MR. BRADLEY: Your Honor, I'm not sure if he's  
7 asking from the testimony, or did he know in 2003.

8 MR. JACOBS: I just asked him from the testimony.

9 MR. BRADLEY: Whether he knew from the testimony  
10 isn't relevant to what he knew when he wrote this response.

11 THE COURT: I think he can ask what his  
12 understanding is from the testimony about that.

13 A. Okay. Could you repeat your question?

14 Q. You were present for the testimony; correct?

15 A. That's correct.

16 Q. Do you recall whether there was any testimony that a  
17 misconduct was issued for the documents that were taken on  
18 September 15<sup>th</sup>, 2003?

19 A. I believe there was testimony referencing a misconduct  
20 issued to Inmate Lyons.

21 Q. Okay. And based on this document right here, you  
22 indicated that technically that would be loaning and  
23 borrowing, Mr. Lyons being in possession of my legal  
24 documents; correct?

25 A. That's what I said.

1 Q. Are you trying to say that prisoners are not allowed to  
2 assist each other with legal work?

3 A. No, that's not what I'm saying .

4 Q. Wasn't your position in the year 2003 that a prisoner  
5 could not assist another prisoner with legal work?

6 A. No, that was not my position.

7 Q. And by your response in this document right here, you  
8 were aware that Mr. Lyons was in possession of my legal  
9 property; right?

10 A. Yes, based on the misconduct.

11 Q. And based on your response right here; right?

12 A. Can you repeat the question?

13 Q. Based on your response in this document right here,  
14 Exhibit No. 3, you already knew that Mr. Lyons was in  
15 possession of my legal property?

16 A. Based on your statement, yes.

17 Q. And based on you talking to Mr. Giddens; correct?

18 A. No, based on your statement.

19 Q. Based on my admission that Mr. Lyons had my legal  
20 brief?

21 A. Yes, based on your statement that Mr. Lyons had your  
22 legal property.

23 Q. Yet, you still stated in that document that you would  
24 consider returning those documents?

25 A. I did state that.

1 Q. So, just because documents were taken that belonged to  
2 me from Mr. Lyons, doesn't necessarily mean that the documents  
3 not be returned; correct?

4 A. If they were determined to be contraband, they wouldn't  
5 be returned.

6 Q. But you already knew when you wrote this document right  
7 here, based on my own statement, that Mr. Lyons had those  
8 documents, and that those documents belonged to me; right?

9 A. Yes.

10 Q. And you still said that you would consider returning  
11 those documents.

12 A. What I said was, I will review the matter, and if  
13 appropriate, the items will be returned.

14 Q. To me?

15 A. You.

16 Q. Correct?

17 A. To you.

18 Q. Okay. Despite the fact that the documents in  
19 Mr. Lyons' possession was interpreted as being contraband?

20 A. Is that a question?

21 Q. I'm asking you that, you still made that consideration,  
22 you still made the consideration of returning those legal  
23 documents, despite the fact that they were labeled contraband  
24 in the hands of Mr. Lyons?

25 A. I considered that possibility, yes.

1 Q. Is that also consistent with, with any policy or  
2 procedure of the Department of Corrections?

3 A. That's a very broad question. Can you narrow the  
4 question?

5 Q. Were you present for the testimony of Mr. Bared?

6 A. Yes, I was.

7 Q. Do you know who Mr. Beard is?

8 A. Yes, I do.

9 Q. Do you recall in Mr. Beard's testify that those  
10 documents, although those documents may have been labeled  
11 contraband in the hands of Mr. Lyons, if they were returned to  
12 me, they were not considered contraband.

13 Do you remember that testimony?

14 A. I recall something to that effect, yes.

15 Q. Is there a policy or procedure that addresses whether  
16 or not documents, or any type of item that's labeled  
17 contraband, can be returned to a prisoner?

18 A. I can't cite specific policy language that states that.

19 A. Do you recall any?

20 A. No.

21 Q. I'm not sure if I heard you correctly on direct  
22 examination. Did you -- you don't recall whether or not you  
23 actually received these documents?

24 A. I don't believe I said anything incorrect about that.

25 Q. Did you receive the document?

1 A. I don't recall.

2 Q. You don't remember?

3 A. No. I don't remember.

4 Q. Had you received these documents, what would be the  
5 procedure for the handling of them?

6 A. Had I received the documents, and they were marked as  
7 contraband, with the attached DC 154A and related misconduct,  
8 they would have been secured either by myself or another  
9 member of my staff in the Security Office until the outcome of  
10 the misconduct hearing.

11 Q. Suppose there was no misconduct hearing.

12 A. I don't know if there was or there wasn't.

13 Q. But I'm saying, suppose they weren't -- suppose there  
14 wasn't a misconduct hearing, and those documents were still  
15 being held in the unit.

16 A. In the unit?

17 Q. Yeah, before they got sent to the Security Department.

18 A. I wouldn't have anything to do with them until they  
19 were sent to the Security Department.

20 Q. So, do the documents get sent to the Security  
21 Department before or after the misconduct hearing?

22 A. In this particular instance, or in general?

23 Q. Pursuant to the policy.

24 A. In general terms, misconducts were issued to the  
25 inmate. If items were confiscated as contraband, they were

1 turned in to the Security Office.

2 Q. And do you have any recollection as to how those  
3 documents were handled in this particular case?

4 A. No, I do not.

5 Q. But generally, you're saying that as soon as they are  
6 confiscated, they are sent to the Security Department?

7 A. In general, that's the case. There are cases as well  
8 in restricted housing units where they are secured on the  
9 unit, because that's where the misconduct hearing will be  
10 held.

11 Q. You stated that prior to the events in question, you  
12 did not know whether or not I had pending litigation in the  
13 courts?

14 A. That's what I said.

15 Q. But you did become aware of that at some time; correct?

16 A. Based on this statement that you sent me on the  
17 DC-135A. If I may, you specifically stated, you specifically  
18 stated that the items were in reference to your active case,  
19 and that there were motions filed on, quote, defendants.

20 Q. File by defendants.

21 A. All right. Okay, fine. That's what it says.

22 Q. So, you did become aware, based on this statement. And  
23 you did become aware that I was trying to access -- exercise  
24 my right to access to the courts?

25 A. Yes.

1 Q. And you stated that you were not trying to interfere  
2 with that right of access to the courts?

3 A. That's what I stated.

4 Q. And that you would review the matter with  
5 Lieutenant Giddens concerning those documents?

6 A. That's correct.

7 Q. And would you have, would you have gotten his input on  
8 whether or not to return those documents?

9 A. I'm not sure I understand your question.

10 Q. Well, the purpose of you talking to Defendant Giddens  
11 was to get his position on the matter; correct?

12 A. No, that's not why I talked to Lieutenant Giddens.

13 My purpose for contacting the Lieutenant was simply to  
14 establish why you wrote the statement and what documents were  
15 being referenced.

16 Q. I told you on the statement why I wrote the document --  
17 why I wrote the statement; correct?

18 A. That's true.

19 Q. And you stated that you had no recollection whether or  
20 not the documents were ever sent to you; right?

21 A. That's correct.

22 Q. Showing you what's been marked as Plaintiff's  
23 Exhibit No. 29.

24 Do you recognize that document?

25 A. Yes, I do.

1 Q. Would that be your name?

2 A. Yes, that's my name.

3 Q. You see No. 1?

4 A. Yes, I do.

5 Q. Did you read it?

6 A. Did I read it?

7 Q. Yeah.

8 A. Yes.

9 Q. Do you see a response?

10 A. Yes, I do.

11 Q. So, you're denying that those documents were ever sent  
12 to you?

13 A. No. I'm denying that I recall ever receiving them.

14 Q. You didn't say that you didn't recall, you said that  
15 you denied that; correct?

16 A. Correct.

17 Q. And now you're saying, you don't remember?

18 A. That's correct.

19 Q. But those documents were sent to you. There would be  
20 documentation that they were sent to you; wouldn't it?

21 A. Yes, there would.

22 Q. And those documents would be accessible by the  
23 Department of Corrections; correct?

24 A. That's correct.

25 Q. And you would be able to determine whether or not the

1 documents were actually sent to you or they weren't sent to  
2 you; wouldn't you?

3 A. If I had access to those records, yes.

4 Q. You're the one that creates the records in the Security  
5 Department; aren't you?

6 A. Yes, sir.

7 Q. And there's a specific form that a person within -- a  
8 Security Department person fills out when they receive  
9 contraband from within the prison; isn't it?

10 A. What form are you referencing, sir?

11 Q. Is there any form?

12 A. We kept a log book, a register, if you will, of items  
13 received.

14 Q. So, it would be documented?

15 A. Yes.

16 Q. But if you didn't fill out this form, and you didn't  
17 secure this documentation, it wouldn't be documented?

18 A. It's documented on the 154A.

19 Q. I mean, further documentation after it's sent to the  
20 Security Department.

21 Isn't there further documentation after the 154A?

22 A. As I just stated, there was a log book.

23 Q. And was also acknowledgement that those documents are,  
24 or any type of contraband was received by the Security  
25 Department?

1 A. That was the purpose of the log book, yes.

2 Q. Showing you what's been marked as Plaintiff's  
3 Exhibit No. 30.

4 Do you recognize this document?

5 A. I can't say for certain that I do. I can't recall it,  
6 other than what's on the screen right now.

7 Q. Can you see who that document is addressed to?

8 A. Yes. It's addressed to, Security Department. My name  
9 is written underneath it.

10 Q. And you see the date?

11 A. October 7<sup>th</sup>, 2003.

12 Q. And that would have been after you responded to my  
13 initial questions concerning the documents taken from  
14 Mr. Lyons; correct?

15 A. That is correct.

16 Q. Do you have any recollection of receiving any type of  
17 letter, if you will, of this type?

18 A. From you? No, I don't.

19 Q. Do you see my allegation in that document that --

20 MR. BRADLEY: Your Honor, I'm going to object. He's  
21 indicated that he doesn't have any recollection of seeing  
22 this. Perhaps if he wants to show it to him first, to refresh  
23 his recollection.

24 THE COURT: Give him an opportunity to read it and  
25 see if it refreshes his recollection.

1 MR. JACOBS: Okay.

2 BY MR. JACOBS:

3 A. I've read it.

4 Q. Okay. Do you see my allegation in the body of this  
5 letter that --

6 MR. BRADLEY: Your Honor, in the absence of him  
7 having -- well, he didn't ask the question.

8 THE COURT: You need to ask if it has refreshed his  
9 recollection.

10 BY MR. JACOBS:

11 Q. I'm going to show his attention to that specific  
12 section.

13 THE COURT: You need to ask if his recollection is  
14 refreshed after reviewing it.

15 MR. JACOBS: He said he don't remember receiving it.

16 THE COURT: That's why you asked him to read it.

17 BY MR. JACOBS:

18 Q. Does that refresh your recollection?

19 A. No, it doesn't.

20 MR. BRADLEY: Based on that, Your Honor, I would  
21 object to any further questioning on this exhibit to this  
22 witness.

23 THE COURT: The objection is sustained.

24 BY MR. JACOBS:

25 Q. As a member of the Security Department, you're

1 responsible for the accountability of all contraband sent to  
2 the Security Department; correct?

3 A. That is correct.

4 Q. And you're responsible for maintaining the chain of  
5 custody that -- of that contraband; correct?

6 A. Yes.

7 Q. When does your responsibility with regards to that  
8 contraband begin?

9 A. It begins the time it comes into my office.

10 Q. And when does it end?

11 A. The final disposition of the property.

12 Q. And that would be when?

13 A. That would vary on a case-to-case basis.

14 Q. And it would be based on a grievance proceeding?

15 A. No.

16 Q. Are you familiar with the policy that if a prisoner  
17 files a grievance about property taken from him, that no  
18 disposition is supposed to be taken until after all levels of  
19 appeal are exhausted?

20 A. Can you repeat the question?

21 Q. If a prisoner files a grievance about property being  
22 taken from him, nothing is supposed to be done with that  
23 property until all levels of appeal are exhausted; correct?

24 Isn't that the policy?

25 A. Yes, that's correct.

1 A. Wasn't that the policy at the time in question?

2 A. I believe it was.

3 Q. So, nothing was supposed to be done with that property  
4 that was taken on September 17<sup>th</sup>, 2003 until after the final  
5 level of appeal was exhausted; correct?

6 A. That would be correct.

7 Q. I'm showing you what's marked as Defendant's Exhibit  
8 No. E, or Exhibit E. Do you recognize that exhibit?

9 A. I recognize what it is.

10 Q. Okay. Do you see the date?

11 A. Yes, I do.

12 Q. So, and do you agree with me that this is the final  
13 disposition of the grievance that I filed regarding the  
14 documents taken from Mr. Lyons on September 15<sup>th</sup>, 2003?

15 A. Can you repeat that, please? I was reading the  
16 document.

17 MR. BRADLEY: Your Honor, we'll stipulate that this  
18 is the letter indicating the final review of this grievance.

19 THE COURT: Is that stipulation accepted,  
20 Mr. Jacobs?

21 BY MR. JACOBS:

22 Q. Do you agree with me, based on this document and the  
23 date of this document, November 4<sup>th</sup>, 2003, that the documents  
24 taken from Mr. Lyons on September 15<sup>th</sup>, 2003 should not have  
25 been destroyed any time prior to that day, under the DOC

1 policy?

2 A. I'm not sure I understand your question in reference to  
3 this document.

4 Q. In reference to the preservation of the item being  
5 challenged through the grievance process. You stated when a  
6 prisoner files a grievance challenging the seizure of any of  
7 his property, that nothing is supposed to be done with that  
8 property until all levels of appeal are exhausted.

9 You remember that?

10 A. Yes.

11 Q. And this would be a level of appeal; correct?

12 A. Yes.

13 Q. So, at least until November 4<sup>th</sup>, 2003, those documents  
14 should not have been destroyed?

15 A. That's correct.

16 Q. And even if they had been destroyed, or anything was  
17 intended to be done with them, I was supposed to be notified;  
18 wasn't I?

19 A. Correct.

20 Q. And I was supposed to be given an opportunity to shred  
21 them or destroy those documents?

22 A. Technically, the items were taken from Mr. Lyons. They  
23 weren't taken from you.

24 Q. I understand that.

25 A. And the issue at hand was that they were contraband

1 from Mr. Lyons.

2 Q. But I filed the grievance.

3 A. I understand that. The documents were evidence of  
4 Mr. Lyons' misconduct.

5 Q. But I was the known owner; correct?

6 A. No.

7 Q. No?

8 A. The mere fact you said they were yours, did not  
9 establish ownership.

10 A. Well, the guards said that they were mine, too. You  
11 remember that testimony?

12 A. No.

13 Q. You don't remember that?

14 A. No.

15 Q. I'm showing you what's been marked as Plaintiff's  
16 Exhibit No. 6.

17 Do you see the highlighted portion of that document?

18 A. Yes, I do.

19 Q. Does that refresh your recollection as to who these  
20 documents belong to?

21 MR. BRADLEY: I'm going to object. He testified  
22 he's never seen the document. So, he can only speculate as to  
23 whether he knows what they are saying, and also, who they  
24 belonged to.

25 THE COURT: Please lay a foundation about his

1 understanding with respect to this document, Mr. Jacobs.

2 BY MR. JACOBS:

3 Q. Are you suggesting that I was not the known owner of  
4 those documents?

5 A. No, I'm not suggesting anything.

6 Q. So, you don't dispute I was the known owner of those  
7 documents?

8 A. I didn't have any facts at the time as to who owned  
9 them.

10 Q. Well, I tell you in the initial letter that I sent to  
11 the Security Department that they belonged to me; correct?

12 A. Yes, you did.

13 Q. Did you do any investigation as to whether or not that  
14 representation was true or false --

15 A. No, I didn't.

16 Q. -- or to the circumstances of the seizure of those  
17 documents?

18 A. No, I did not. Once I established that misconducts  
19 were pending, I waited for the outcome of the misconducts, and  
20 I was not in the process of investigating that matter in any  
21 way.

22 Q. You stated that these documents were contraband in the  
23 hands of Mr. Lyons; correct?

24 A. Yes.

25 Q. If they belonged to me, were they also contraband in my

1 hands?

2 A. They were no longer yours. You had surrendered control  
3 of those documents to Mr. Lyons. They now became contraband  
4 for Mr. Lyons, and you had no more control over them.

5 Q. Under the policy at the time in question, those  
6 documents were returned to me, and I was identified as the  
7 owner of those documents, would they still be contraband?

8 A. Yes, because they were no longer your documents.

9 Q. They would still be contraband, even if they were  
10 returned to me?

11 A. They wouldn't be returned to you, because they were  
12 contraband. They were found in the possession of another  
13 inmate.

14 Q. So, because -- so, you're saying that because they were  
15 found in the possession of Mr. Lyons, and they were labeled  
16 contraband based on him being found in possession of those  
17 documents, that's the end of the story?

18 A. Yes. For me, that was the end of the story. They were  
19 found in possession of another individual. You had  
20 surrendered control of those documents. Therefore, they were  
21 contraband.

22 Q. Yet, in your response to the request slip, you stated  
23 that you were still considering returning those documents?

24 A. No. In my initial response to you in September, the  
25 first communication from you, I said that would I take it

1 under advisement and consider it. That was the very first and  
2 only contact I had with you on that.

3 Q. And you knew at that very first and only contact that  
4 Mr. Lyons was in possession of my legal documents?

5 A. I knew that Mr. Lyons was in possession of contraband;  
6 i.e., the property of another individual. I don't know if  
7 they were legal documents or they were blank papers.

8 Q. Well, you knew they weren't blank papers, because they  
9 were identified as belonging to someone else; correct?

10 A. No, that's incorrect. I hadn't seen the documents. I  
11 don't know what they were.

12 Q. So, is it a policy of the Department of Corrections to  
13 destroy the legal property of a prisoner because it was found  
14 in the hands of another prisoner; is that the policy?

15 A. It is not the policy of the Department of Corrections  
16 to destroy any property --

17 Q. And --

18 A. -- that rightfully belongs to an individual. If it is  
19 found in the possession of another person, it's contraband.

20 MR. JACOBS: Your Honor -- Your Honor, I asked him a  
21 simple, yes, or, no, question about the DOC policy.

22 THE COURT: Just answer the questions, yes, or, no.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Thank you.

25 BY MR. JACOBS:

1 Q. Is it the policy of the Department of Corrections to  
2 destroy legal property of a prisoner because it is found in  
3 the hands of another prisoner?

4 A. No.

5 Q. Yet, my legal property was destroyed?

6 MR. BRADLEY: Your Honor, there's no foundation for  
7 that statement.

8 MR. JACOBS: Well.

9 THE COURT: You have to lay a foundation whether he  
10 knows whether your property was destroyed.

11 BY MR. JACOBS:

12 Q. Do you know what happened to the documents?

13 A. No, I do not.

14 Q. And under normal circumstances, they would have been  
15 sent to you?

16 A. Yes.

17 Q. But in this particular case, you don't recall ever  
18 receiving them?

19 A. That's correct.

20 Q. And if they were sent to you, you would know whether or  
21 not they were sent to you; wouldn't you?

22 A. I'm not sure I follow your question.

23 Q. In other words, there would be documentation that these  
24 documents were received by the Security Department?

25 A. As I previously testified, if I received the documents,

1 I would have logged them into our log book.

2 Q. But if you did not want to document that you were, in  
3 fact, in receipt of these documents, you would just not fill  
4 out the form acknowledging that you received the documents;  
5 correct?

6 A. No; that's incorrect, sir.

7 Q. How is that incorrect?

8 A. Because I wouldn't do that.

9 Q. I mean, is it possible?

10 A. No.

11 Q. Isn't it true that if you don't follow the procedure  
12 for documenting this contraband, and these materials  
13 specifically, no record is contradicted that you ever received  
14 the documents?

15 A. As previously stated, the DC 154A specifically says  
16 they were turned in to Security.

17 My testimony is, I don't recall receiving the  
18 documents, and absent anything there in the record, the log  
19 books, to show they were received, I don't know that I did.

20 Q. Again, would you agree with me, that if the proper  
21 procedures as far as documenting the contraband that was  
22 received in the Security Department were not followed, there  
23 would be no documentation as part of the Security Department  
24 that these documents were ever received?

25 A. No. I would disagree with you.

1 Q. So, if no one fills out the documentation, the  
2 documents will never be created; right?

3 A. The fact that the DC 154A was filled out and  
4 specifically said they were turned in to Security, documents  
5 that they were --

6 Q. I'm not talking about the, before the Security  
7 Department, I'm talking about after the Security Department,  
8 after they are received in the Security Department; okay?

9 A. Okay.

10 Q. If you don't fill out that documentation saying, yes, I  
11 received these documents, this is where we put them, this is  
12 what we did with them, so forth and so on, there would be no  
13 record in that Security Department that these documents were  
14 receive or what was done with them; correct?

15 A. Correct.

16 Q. Are you familiar with the procedures for how  
17 documentary evidence is supposed to be handled by the Security  
18 Department?

19 A. Am I familiar with what?

20 Q. If you receive evidence in the Security Department,  
21 written evidence in the Security Department that's labeled  
22 "contraband", or as being used -- any type of evidence,  
23 there's specific procedures for how that's supposed to be  
24 handled?

25 A. Yes, I'm familiar with those procedures.

1 Q. Isn't it true that if you received this type of  
2 evidence and it tends to prove or disprove any action, there  
3 are specific procedures for how it's supposed to be handled?

4 A. There are procedures in place for how evidence is to be  
5 handled.

6 Q. Specifically, written evidence?

7 A. Written evidence to what?

8 Q. Anything.

9 A. I'm not sure I can follow your line of questioning.

10 Q. Showing you what's been marked as Plaintiff's  
11 Exhibit No. 31 --

12 MR. BRADLEY: Excuse me, Your Honor. Before he asks  
13 any specific questions about this, could the witness be  
14 permitted to examine the entire document?

15 THE COURT: Yes, he may.

16 If you'll take a second to familiarize yourself with  
17 the document.

18 BY MR. JACOBS:

19 A. Yes, I did.

20 Q. Does that refresh your recollection as to procedures in  
21 place concerning the handling of evidence?

22 A. It's identifying the procedures in place. I can't say  
23 for certain that that was in place at the time of this issue.

24 MR. BRADLEY: Your Honor, we'll stipulate that was  
25 the policy that was in place at the time, 2003.

1                   THE COURT: Thank you. The stipulation is accepted.

2                   THE WITNESS: Yes, ma'am.

3 BY MR. JACOBS:

4 Q. You see No. 3, evidence accountability?

5 A. Yes, I do.

6 Q. Can you take minute to look through that?

7 A. Okay.

8 Q. Concerning the documents in question, had those  
9 documents been sent to you -- had those documents been sent to  
10 you, you would have been the person accountable for them;  
11 correct?

12 A. That is correct.

13 Q. And the reason you're saying now you have no  
14 recollection as to whether you received them or not is so you  
15 can avoid that accountability; correct?

16 A. No, that is incorrect.

17 Q. Do you see No. 3, Section 1, each individual who has  
18 custody, who had custody of evidence is identified on a  
19 receipt of property.

20 A. Yes, I do.

21 Q. And that form would have been created after the  
22 evidence in question was sent to the Security Department;  
23 correct?

24 A. Yes.

25 Q. Are you familiar with that form, DC 436, receipt for

1 property form?

2 A. At this point in time, I don't recall these forms.

3 Q. You done know what that form is?

4 A. I don't recall those forms.

5 Q. At all?

6 A. At all.

7 Q. How long did you say you worked in the Security  
8 Department?

9 A. I worked there 25 years. I've been retired for five.

10 Q. You worked in the Security Department for 25 years?

11 A. No. I worked in the institution for 25 years. I  
12 worked in the Security Department for approximately three and  
13 a half years.

14 Q. Three and a half years?

15 A. Yes.

16 Q. And upon -- in your time working in the Security  
17 Department, when you received evidence, did you ever fill out  
18 that form?

19 A. I filed out a number of chain of evidence forms, yes,  
20 chain of custody.

21 Q. That specific form, DC 436?

22 A. I don't know that that's the specific number.

23 Q. Do you recall ever filling out a form acknowledging  
24 that you received evidence?

25 A. Yes.

1 Q. And any transaction of that evidence is supposed to be  
2 recorded; isn't it?

3 A. The document in question, the form you referenced was  
4 used whenever we collected evidence, such as narcotics,  
5 weapons, implements of escape. Those would most likely be  
6 used for prosecution. That was the chain of evidence; from  
7 your hand, to mine, to the State Police.

8 Q. I'm asking you that once you receive evidence in the  
9 Security Department, anything that's done with that evidence  
10 is recorded; isn't it?

11 A. Yes, in the log book that the policy statement  
12 references.

13 Q. Okay. It states right here under 4-b -- you see that?

14 A. Yes, I do.

15 Q. If you received the documents in question, those are  
16 the procedures you would have had to follow; right?

17 A. Yes. That's the procedure I would have followed.

18 Q. If you would have received the documents?

19 A. Correct.

20 Q. Do you see the part where it says, "documentary  
21 evidence".

22 A. Yes, I do.

23 Q. And that documentary evidence, which in itself tends to  
24 prove or disprove the allegation against the subject, must be  
25 collected and processed in the same manner as other types of

1 evidence.

2 You see that?

3 A. Yes.

4 Q. So, if I make an allegation that a prison guard is  
5 attempting to destroy my legal property because his name is  
6 mentioned in them, would that tend to -- would the review of  
7 those documents tend to prove or disprove my allegation?

8 A. I'm not sure I follow your question.

9 Q. Well, if documents were taken; okay?

10 A. Um-hum.

11 Q. And I challenged those documents being taken, and I  
12 state that the reason those documents were taken were for  
13 improper motivations; okay?

14 A. Yes.

15 Q. And that the evidence itself is evidence that the  
16 taking of those documents was improperly motivated, would you  
17 want to review those documents?

18 A. In all probability, I would.

19 Q. But if those documents are destroyed, there would be no  
20 way for you to determine the validity of the claim; correct?

21 A. Correct.

22 Q. Do you see No. 7, "disposition of evidence"?

23 A. Yes, I do.

24 Q. Do you see No. 2?

25 A. Yes.

1 Q. You stated when you talked to Defendant Giddens, he  
2 stated there was pending misconducts?

3 A. Yes.

4 Q. Was that true at my -- the hearing, is that an  
5 administrative hearing, a misconduct?

6 A. It probably would.

7 Q. You see No. 4; articles which are not contraband may be  
8 returned to the apparent owner?

9 A. Yes.

10 Q. Okay. So, you were present for the testimony of  
11 Defendant Giddens; correct?

12 A. Yes.

13 Q. And Defendant Chirico?

14 A. Yes.

15 Q. And do you recall their testimony that the documents  
16 taken from Mr. Lyons on September 15<sup>th</sup>, 2003 were sent to  
17 the Security Department?

18 A. Yes.

19 Q. And you saw the documentation indicating that the  
20 documents were sent to the Security Department; correct?

21 A. I saw that referenced on DC 154A, yes.

22 MR. BRADLEY: Your Honor, can we get a time frame?  
23 I'm not sure if he's saying what he saw in this trial or what  
24 he knew back in 2003.

25 THE COURT: Why don't you clarify that with the

1 witness, Mr. Jacobs.

2 BY MR. JACOBS:

3 Q. You saw all the documentation that was showed to you,  
4 that the documents were sent to the Security Department;  
5 correct?

6 MR. BRADLEY: Again, Your Honor, he hasn't provided  
7 a time frame.

8 THE COURT: Which time frame do you want this to  
9 address, Mr. Jacobs?

10 BY MR. JACOBS:

11 Q. I'm showing you what's marked as Plaintiff's Exhibit  
12 No. 6. Do you see what it says under "disposition"?

13 A. Yes, I do.

14 Q. What does it say?

15 A. It says, sent to security.

16 Q. Okay. As far as we know, you're the only one in the  
17 Security Department that had any knowledge about the events in  
18 question?

19 A. I don't know.

20 Q. I mean, as far as your knowledge?

21 A. When I was in the Security Office, I oversaw two  
22 lieutenants and seven corrections officers. I don't know at  
23 this point in time if any of them had that knowledge.

24 Q. We do know that you were involved with these documents.

25 MR. BRADLEY: Your Honor, he's testified that he got

1 an inmate request slip from Mr. Jacobs.

2 He's also testified that he's never seen the  
3 documents, or does not recall seeing the documents.

4 And with respect to the document that's on the  
5 screen, there's been no evidence that he saw this document  
6 back in 2003.

7 THE COURT: You have to ask if there's -- lay a  
8 foundation to see if the witness is familiar with this  
9 document.

10 MR. JACOBS: I'm not talking about -- I'm done with  
11 the document, Your Honor.

12 THE COURT: Okay.

13 BY MR. JACOBS:

14 Q. I'm asking you who, other than you, in the Security  
15 Department were involved in any way with the documents that  
16 were taken from Mr. Lyons on September 15<sup>th</sup>, 2003?

17 A. I don't know.

18 Q. You don't know of anyone?

19 A. No, I don't know who, if anyone, did.

20 Q. Okay. You represented to me at the time in question,  
21 in your response to my request, that you would review the  
22 matter with Defendant Giddens; correct?

23 A. Yes, I did.

24 Q. Was that a true representation?

25 A. A true representation of what?

1 Q. That that's what you intended to do.

2 A. If that's what I said I would do, that's what I would  
3 do.

4 Q. And in fact, that's what you did; isn't it?

5 A. Yes. I asked Lieutenant Giddens for information on the  
6 issue.

7 Q. You reviewed the matter with Lieutenant Giddens?

8 A. Yeah, I reviewed the matter with Lieutenant Giddens.

9 Q. And Lieutenant Giddens explained to you that I was  
10 trying to sue him?

11 A. That's incorrect.

12 Q. And at that point you and Defendant Giddens came up  
13 with a plan on how you could destroy the documents; correct?

14 A. That also is incorrect.

15 Q. And all of the procedures that were supposed to be  
16 followed with respect to preserving this evidence and document  
17 this evidence were not followed?

18 A. Is that a question?

19 Q. Correct.

20 A. That, too, is incorrect.

21 Q. You were the one held responsible for maintaining the  
22 chain of custody of those documents?

23 MR. BRADLEY: Objection; lack of foundation, Your  
24 Honor.

25 BY MR. JACOBS:

1 Q. Had those documents been seen to you?

2 THE COURT: Sustained.

3 Q. Had those documents been sent to you, as Security  
4 Department staff, you would have been the one responsible for  
5 maintaining chain of custody; correct?

6 MR. BRADLEY: Asked and answered, Your Honor.

7 Q. Based on the policies and procedures?

8 MR. BRADLEY: Asked and answered. We've covered  
9 this.

10 THE COURT: Answer this one last time, and then,  
11 we'll need to move on, Mr. Jacobs.

12 BY MR. JACOBS:

13 A. Your question?

14 Q. Had these documents been sent to you, you would have  
15 been responsible for maintaining the chain of custody of those  
16 documents?

17 A. Yes.

18 Q. And those documents were sent to you?

19 A. I don't know.

20 Q. You don't remember?

21 A. I don't recall.

22 Q. Okay. In fact, the only reason you're saying that you  
23 don't remember is so that you can avoid responsibility for the  
24 destruction of my legal property?

25 A. As I previously stated last time you asked me this,

1 that's incorrect.

2 MR. JACOBS: No further questions.

3 REDIRECT EXAMINATION

4 BY MR. BRADLEY:

5 Q. Did you knowingly and intentionally fail to document  
6 the receipt of these 151 pages of materials taken from Eric  
7 Lyons?

8 A. No, I did not.

9 Q. Mr. Jacobs had asked you a question about No. 1 on  
10 what's been previously marked as Plaintiff's Exhibit No. 29,  
11 and what you were being asked to do is admit, or, then,  
12 whether you received 151 pages of legal documents belonging to  
13 me Andre Jacobs on or about September 15<sup>th</sup> of 2003.

14 Is that correct?

15 A. Yes, sir.

16 Q. And what were the two choices for you to respond?

17 A. The two choiceses were either to admit or deny the  
18 particular question.

19 Q. And did you receive 151 pages of legal documents  
20 belonging to Andre Jacobs on or about September 15<sup>th</sup>, 2003?

21 A. I do not recall.

22 Q. So, therefore, you could not admit that?

23 A. That's correct.

24 Q. And therefore, you denied that?

25 A. Yes, sir.

1 Q. Mr. Jacobs had asked you earlier about whether in this  
2 document he made any mention of his pending legal case.

3 Do you recall that?

4 A. Yes.

5 Q. And he referred you to the highlighted portion.

6 A. Yes.

7 Q. Could you read that again?

8 A. The legal materials which you are currently withholding  
9 pertains to my active case, and you are interfering with my  
10 responding to a motion recently filed by defendants.

11 Q. Is there anywhere in that that it mentions a pending  
12 lawsuit was in these materials that named Lieutenant Giddens?

13 A. No, sir, there's not. And if I may say, in my  
14 experience with these kind of things, most inmates when they  
15 refer to their active case, they are referring to the current  
16 case on which they are incarcerated on.

17 MR. BRADLEY: Nothing further. Thank you.

18 RECROSS EXAMINATION

19 BY MR. JACOBS:

20 Q. Mr. Bradley just asked you, did you knowingly fail to  
21 not document the receipt of documents that were taken from  
22 Mr. Lyons.

23 Remember that question?

24 A. Yes.

25 Q. And what was your answer?

1 A. I believe I said, no.

2 Q. But you said, you don't remember receiving them at all.

3 A. And the question was, did I knowingly do something.

4 And I said, no.

5 Q. No. He said, did you knowingly fail to document the  
6 receipt of the materials taken from Mr. Lyons, and you said,  
7 no.

8 A. That's correct.

9 Q. But you said you didn't remember whether they were sent  
10 to you at all.

11 A. Correct.

12 Q. Want to draw your attention to, I'm referring to you  
13 what's been marked as Plaintiff's Exhibit No. 29. And draw  
14 your attention to No. 7.

15 A. Okay.

16 Q. And what does that particular sentence actually do?

17 A. Excuse me?

18 Q. That asks you to admit or deny that statement; correct?

19 A. Yes.

20 Q. Do you see the response?

21 A. Yes, I do.

22 Q. Do you agree with me that you did more than admit or  
23 deny the statement?

24 A. Yes.

25 MR. JACOBS: No further questions.

1 MR. BRADLEY: Just briefly.

2 REDIRECT EXAMINATION

3 BY MR. BRADLEY:

4 Q. If you had failed to document the receipt of these  
5 items to the Security Department, would that have been in  
6 violation of your obligations as a Department of Corrections'  
7 employee?

8 A. Yes, it would.

9 Q. Would you have remembered that?

10 A. Yes, I would.

11 Q. Did you do that?

12 A. No, did I not.

13 Q. Thank you.

14 MR. BRADLEY: No further questions.

15 RECROSS EXAMINATION

16 BY MR. JACOBS:

17 Q. So, so you're saying you didn't document the receipt of  
18 these documents?

19 A. No, that's not what I'm saying.

20 Q. Saying you don't recall documenting receipt of these  
21 documents?

22 A. I'm saying I don't recall receiving or documenting  
23 them, yes.

24 Q. And you just stated that if you did violate the  
25 procedures of the Department of Corrections, you would have

1 remembered it?

2 A. Yes.

3 Q. And Defendant Chirico and Defendant Giddens said that  
4 they sent them to you, to the Security Department.

5 MR. BRADLEY: I'm going to object. There's been no  
6 testimony on that. The exhibit speaks for itself.

7 MR. JACOBS: No, they testified that they sent them  
8 to the Security Department the same day.

9 MR. BRADLEY: Well, he said something --

10 THE COURT: Ask him if he recalls that testimony.

11 BY MR. JACOBS:

12 Q. Do you recall that testimony?

13 A. Yes.

14 Q. You recall the testimony that Defendant Giddens and  
15 Chirico stated that they did send that material, taken from  
16 Mr. Lyons on September 15<sup>th</sup>, to the Security Department on  
17 that day?

18 A. Yes.

19 Q. But you don't recall receiving it?

20 A. That's correct.

21 MR. JACOBS: No further questions.

22 THE COURT: Okay. This would be a good time for us  
23 to recess.

24 Members of the jury, thank you for your patience,  
25 since the trial has gone longer than we initially anticipated.

1 As I indicated, we expect to have some further testimony next  
2 Monday, perhaps Tuesday, but I think the evidence phase of the  
3 trial will be over either Monday, or Tuesday in the morning.

4 So, with that, I'm going to ask you to have a very  
5 nice weekend, and to remember the instructions, and to comply  
6 with them, that I've been giving you.

7 You cannot talk about the case, you cannot among  
8 yourselves, or at home, or with anyone else.

9 You cannot do any investigation or research  
10 whatsoever, of any kind. You still need to keep an open mind.

11 So with that, please rise for the jury.

12 (Whereupon, jury retired at 4:30 p.m.)

13 THE COURT: Just be seated, and we'll wait for the  
14 jury to leave. And we have two items to take care of.

15 (Whereupon, a conference was held in case  
16 No. 04-1941, Andre Jacobs v. Department of Corrections, et al)

17 THE COURT: This is Judge Conti calling. We have a  
18 conference call.

19 MISS ATEN: Hi. This is Rebecca Aten.

20 THE COURT: Good afternoon. This is Judge Conti.

21 We are here in Court. I have -- Mr. Jacobs is here,  
22 as well as Mr. Bradley, representing the defendants, along  
23 with Mr. Willig.

24 This is a conference in the civil action Jacobs  
25 versus Durco, 04-1941. This Court was scheduled for trial on

1 Monday, November 17<sup>th</sup>, and the Court had understood that there  
2 was one witness who had some scheduling issues and could only  
3 be available on the 18<sup>th</sup> of November.

4 The first -- there are three cases originally  
5 involving Mr. Jacobs that the Court had scheduled. The first  
6 case is the case that the Court is presently hearing, and that  
7 is Jacobs versus Pennsylvania Department of Corrections,  
8 04-1366. That case has gone longer than anticipated, and in  
9 fact, we still have at least another perhaps day to day and a  
10 half of testimony, plus argument, and that will take that  
11 first case into next week. And so, we're not going to be able  
12 to start either the second or third case for Mr. Jacobs as we  
13 had originally anticipated and scheduled.

14 So, I want to check your availability for trial to  
15 begin on January 20<sup>th</sup>, and to go the rest of that week. So  
16 we would have at least four days, and we could go to the next  
17 week, if we needed to.

18 MR. SAMPSON: Your Honor -- this is Michael Sampson.  
19 And I, along with Miss Aten and Michelle Mantini, represent  
20 Mr. Jacobs in the Jacobs versus Durco action.

21 Just to clarify, are you saying both cases will be  
22 tried that week, or the next case?

23 THE COURT: Well, the next case I can try on  
24 March the 2<sup>nd</sup>. Mr. Bradley has a problem doing it on  
25 March the 2<sup>nd</sup>, so I was hopeful that you would be able to have

1 your trial on the 20<sup>th</sup> of January.

2 MR. SAMPSON: Well, Your Honor, I think that will  
3 work. In all candor, Your Honor, you had indicated at the  
4 last conference that you intend to have this completed by  
5 November, so we actually checked with our expert and our  
6 witnesses through the month of December. We have not yet had  
7 a chance to, you know, check on their availability at the end  
8 of January. We can certainly do that as soon as we're done  
9 here.

10 THE COURT: Okay. If you could do that, and let me  
11 know as soon as possible.

12 MR. SAMPSON: That's fine.

13 THE COURT: Okay.

14 THE COURT: Mike.

15 MR. SAMPSON: So we're clear, that under no  
16 circumstances this trial would commence before January 20<sup>th</sup>.

17 THE COURT: That's correct. I have another trial  
18 that's supposed to begin on January the 5<sup>th</sup>. So, this will be  
19 the 20<sup>th</sup>.

20 MISS ATEN: Okay, Your Honor.

21 MR. SAMPSON: We will do that, and I think we can  
22 get back to you by tomorrow, Your Honor, to confirm that week.

23 THE COURT: That would be appreciated.

24 MR. SAMPSON: No problem.

25 THE COURT: Okay. Thank you.

1                   What the Court will do is we'll tentatively set the  
2 04-1941 for January the 20<sup>th</sup>, and then, the 04-1592 case for  
3 trial on March 2<sup>nd</sup>.

4                   MR. SAMPSON: That's fine, Your Honor. We should be  
5 able to let you know, again, by tomorrow. We'll confer with  
6 all of our witnesses' schedules and let you know if that poses  
7 a problem. Optimistically, it will not.

8                   THE COURT: Do you understand all that, Mr. Jacobs?

9                   MR. JACOBS: Yes.

10                  THE COURT: That way we'll have enough time to have  
11 this case concluded this month.

12                  MR. SAMPSON: No problem, Your Honor.

13                  THE COURT: I'm sorry?

14                  MR. SAMPSON: I said, no problem.

15                  THE COURT: I think we'll need to direct the  
16 marshals to return those individuals who had been written in.

17                  MR. WILLIG: Yes, Your Honor.

18                  THE COURT: Okay. Thank you.

19                  Do you need any of those for rebuttal witnesses in  
20 this case?

21                  MR. JACOBS: No. I was wondering if you was going  
22 to address my other motion?

23                  THE COURT: I am. I'm going to take that up now.

24                  MR. JACOBS: In the event that maybe this, the other  
25 witness might not be able to be secure, I might be able to use

1 Mr. Brown as a rebuttal witness, because he was there around  
2 the same time frame, if that's more convenient.

3 MR.WILLIG: Well, we need --

4 THE COURT: You need to tell us whether you may be  
5 calling -- you're advising the Court now you may be calling  
6 Mr. Brown as a rebuttal witness.

7 MR. JACOBS: Right.

8 THE COURT: Okay. Why don't we keep him.

9 MR.WILLIG: Okay.

10 THE COURT: Okay. Then, we won't have any problems.  
11 Are there other -- there were a couple other  
12 witnesses, though, and those will be returned.

13 MR.WILLIG: Two others, Your Honor.

14 THE COURT: And two others will be returned.

15 MR. JACOBS: I got some motions --

16 THE COURT: Yes.

17 MR. JACOBS: -- that I was unable --

18 THE COURT: Okay, I'm sorry.

19 MR. JACOBS: -- that I was unable to get copies of.  
20 These are just originals that had some handwritten motions.

21 THE COURT: Oh, all right. Are these ones I haven't  
22 seen yet?

23 MR. JACOBS: Right.

24 THE COURT: Okay. Okay.

25 MR. SAMPSON: Your Honor, this is Mike Sampson. I

1 apologize for interrupting.

2 THE COURT: We don't need you any further.

3 Does anyone need the counsel from Reed Smith?

4 MR. SAMPSON: That is why I wanted to check. We  
5 will get back to you tomorrow.

6 THE COURT: Thank you very much.

7 MR. SAMPSON: Thank you, Your Honor.

8 MR. JACOBS: I just wanted to ask you also about the  
9 Rule 608; had attempted to put in some evidence, extrinsic  
10 evidence.

11 THE COURT: Under Rule 608, the extrinsic evidence  
12 doesn't come in unless it's a prior conviction.

13 MR. JACOBS: I believe the rule had said something  
14 about specific instances of conduct.

15 THE COURT: You can inquire into that on cross  
16 examination, but extrinsic, it says, 608(b), specific  
17 instances of the conduct of a witness for the purpose of  
18 attacking or supporting the witness' character for  
19 truthfulness, other than conviction of crime, as provided in  
20 Rule 609, may not be proved by extrinsic evidence.

21 They may, however, in the discretion of the Court,  
22 if probative of truthfulness or untruthfulness, be inquired  
23 into on cross examination of the witness.

24 So, they can't -- the evidence can't come in  
25 independently. And the Court's recollection is that you were

1 permitted to probe into those issues of misconduct on cross  
2 examination. So, I did permit you to do that.

3 MR. JACOBS: Okay.

4 THE COURT: Mr. Bradley, did you wish to be heard on  
5 that?

6 MR. BRADLEY: That's my recollection of what  
7 happened, although -- I'll leave it at that.

8 THE COURT: Okay. All right.

9 The Court has received the plaintiff's reply to  
10 defendants' brief on Eighth and Fourteenth Amendment in State  
11 tort law claims.

12 The Court has received the plaintiff's request to  
13 confer with and secure rebuttal witnesses.

14 The Court has also received the plaintiff's motion  
15 for, I think you meant to say, various immediate relief,  
16 compel remaining portions of 6.3.1 procedures, and a reply to  
17 defendants' claim that he opened the door for testimony on  
18 LTSU.

19 Mr. Bradley, have you received copies of all of  
20 those?

21 MR. BRADLEY: Your Honor, I received the request to  
22 confer with and secure rebuttal. The reply that he opened the  
23 door to the LTSU --

24 THE COURT: I believe that's moot now.

25 MR. JACOBS: Yeah. I had it wrote down before. So,

1 that motion is moot. That reply is moot.

2 MR. BRADLEY: Yes, I received all of those, Your  
3 Honor.

4 THE COURT: And there's some new motions now?

5 MR. JACOBS: Yes. This is, is with regards to the  
6 instructions to the jury; jury instructions.

7 THE COURT: Well, this is on the final charge.

8 MR. JACOBS: Yes.

9 THE COURT: Okay. Okay. I'm hoping to take up the  
10 final charge issues next week after the defendants' case is is  
11 completed, so that we can have a full final charge conference,  
12 and we'll know everything there is to know about the evidence  
13 in the case at that time.

14 So, Mr. Bradley just received now two new motions by  
15 the plaintiff; motion to strike defendants' affirmative  
16 defense, and plaintiff's objections to Court's jury  
17 instructions.

18 I haven't had a chance to review these, either. So  
19 if you could file your response by Monday at 9:00 a.m., that  
20 would be appreciated. Okay.

21 How about the plaintiff's -- let take up the  
22 plaintiff's request to confer with and secure rebuttal  
23 witnesses.

24 Have you filed these, have you filed any of these  
25 motions yet?

1 MR. JACOBS: Through the mail?

2 THE COURT: Yes.

3 MR. JACOBS: No.

4 THE COURT: Okay. Okay. So, we'll need the  
5 originals to file these; okay? You can have the copies back.

6 THE COURT: Is the Courtroom Deputy making copies of  
7 the request to confer with rebuttal witnesses?

8 MATTHEW FERGUS, Law Clerk: That's what she is doing  
9 now.

10 THE COURT: Are we ready? Okay.

11 The plaintiff is requesting a rebuttal witness be  
12 made available, Mr. Bronson, and also wants to have a letter  
13 forwarded to Mr. Bronson, describing the nature of the  
14 testimony he would be eliciting.

15 MR. BRADLEY: Initially, Your Honor, I think he's  
16 actually asking for two witnesses. I think the first  
17 paragraph describes another witness. But based on the  
18 description, or absence of a description, I have no idea what  
19 he's referring to.

20 THE COURT: Okay. Says, just relating to  
21 Mr. Bronson, this motion.

22 MR. JACOBS: Yes, yes.

23 THE COURT: Just Mr. Bronson.

24 MR. BRADLEY: Okay. So, can I ignore Paragraph 1?

25 THE COURT: Yes. We may have to discuss Mr. Brown

1 as well -- he came up -- later today.

2 MR. BRADLEY: With regard to Mr. Bronson, first, I  
3 would note that this witness was listed on the pretrial  
4 statement as an intended witness in this case. So, Mr. Jacobs  
5 has known about his existence, and had the opportunity to have  
6 him brought in and provide testimony in his case in chief.

7 THE COURT: Maybe I should ask Mr. Jacobs. What  
8 would he be called to rebut?

9 MR. JACOBS: Evidence elicited by the defendants  
10 that practices concerning the practices of destruction of  
11 property, the amount -- the amount of time that these  
12 incidents were placed, and documents, these incidents taking  
13 place, prisoners' documenting seizure and destruction of legal  
14 property, retaliation, things of that nature. The specific  
15 incidents documented.

16 THE COURT: Mr. Bradley.

17 MR. BRADLEY: Initially, that's the exact same type  
18 of testimony he q from the other witnesses. It seems like  
19 what he's doing is just calling this rebuttal testimony, and  
20 sort of having the last word on the issue. It appears his  
21 Mr. Bronson's testimony would be cumulative of the testimony  
22 that's already been presented. And again, it puts us in the  
23 position of having to, on very short notice, try to come up  
24 with surrebuttal.

25 He has known of this witness. He has known

1 particularly of that type of evidence. He could have had  
2 Mr. Bronson made available in his case in chief, and I just  
3 think at this point it would be inappropriate to have him  
4 called as a rebuttal witness.

5 MR. JACOBS: Well, due to the -- as I indicated in  
6 the motion, due to the late ruling on the issue of Mr. Brett  
7 Grote, I was under the impression that Mr. Brett Grote's  
8 testimony would be allowed, and had that testimony been  
9 allowed, I would not have needed Mr. Bronson's testimony. And  
10 Mr. Bronson does have direct knowledge with respect to time  
11 frames and events which Mr. Grote did not have, and which I  
12 was under the impression Mr. Grote would be able to testify to  
13 having.

14 THE COURT: What you're saying is you really need to  
15 call him in your case in chief.

16 MR. JACOBS: Well, I was going to that was why I had  
17 listed him as an initial witness in the pretrial narrative  
18 statement. But then, I was placed under the impression that  
19 Mr. Grote had that same type of information and would be  
20 easily produced at the trial. Then it came that up  
21 Mr. Grote's testimony would not be permitted concerning the  
22 wide-spread practice within the LTSU at the relevant time  
23 frame of the claims within the case.

24 MR. BRADLEY: He could have brought that up at the  
25 time we were getting the witnesses together. I mean, and

1 again, this is stuff in his case in chief. This is not  
2 rebuttal.

3 THE COURT: In Emrick versus Suzuki Motor, 750 F.2d,  
4 19, Third Circuit, 1984 -- I'll repeat that for you. 750  
5 F.2d, 19, Third Circuit, 1984, the Court of Appeals for the  
6 Third Circuit on Page 22 stated, it is well settled that  
7 evidence which properly belongs in the case in chief, but is  
8 first introduced in rebuttal, may be rejected, so as to avoid  
9 prejudice to the defendant and to assure, ensure the orderly  
10 presentation of proof.

11 And in United States versus Chrzanowski, 502 F.2d,  
12 573, Third Circuit, 1974, the Court of Appeals for the Third  
13 Circuit, on Page 576, noted that the proper function and  
14 purpose of rebuttal testimony is to explain, repel, counteract  
15 or disprove the evidence of the adverse party.

16 In Upshur versus Shepherd, 538 F.Supp. 1176, Eastern  
17 District of Pennsylvania, 1982, affirmed at 707 F.2d, 1396,  
18 Third Circuit, 1983, the District Court noted that the trial  
19 Court has discretion to limit the scope of rebuttal evidence  
20 to that which is precisely directed to rebutting new matter or  
21 new theories presented by the defendant's case in chief.

22 So you know, I just was curious as to why you didn't  
23 bring this up when the Court said Mr. Grote would not be able  
24 to testify, when I made that ruling.

25 MR. JACOBS: Well, for one, I didn't have none of my

1 files at that time. I only had limited files concerning this  
2 particular case. And as the testimony developed, and the  
3 defendants elicited testimony concerning particularly notice  
4 of the -- of claims and the documented instances of these, of  
5 seizure and destruction of property, it became apparent to me  
6 that that was going to weigh strongly on the issue of  
7 supervisory liability. And I do want to disprove the  
8 testimony of defendants in this case that there were not many  
9 instances of the seizure and destruction of property, and  
10 claims by LTSU prisoners at the relevant time frame.

11 THE COURT: Okay. The Court does have some  
12 discretion here. I'll permit his testimony, but limited to  
13 his personal knowledge. He can't testify about what happened  
14 with other prisoners; only about his personal involvement, and  
15 the claims he's filed during the relevant time frame. It has  
16 to be fairly limited, because we're already way beyond the  
17 time frames here, and it has to be specifically directed to  
18 the particular defendants. And then, of course, the  
19 defendants will have an opportunity for surrebuttal. Okay.

20 MR. JACOBS: Okay.

21 THE COURT: Now, the other individual --

22 MR. JACOBS: The paragraph within, where I was asked  
23 to confer with my witness, is a witness that has been coming  
24 and had been here throughout the trial, and this witness --

25 THE COURT: I think do you have a problem with him

1 sending the letter.

2 MR. BRADLEY: He -- I specifically asked about  
3 Paragraph 1. I indicated that Paragraph 1 did not refer to an  
4 independent witness.

5 THE COURT: He wants to send Mr. Bronson the letter.

6 MR. BRADLEY: That's fine.

7 THE COURT: Okay. You'll get that to him?

8 MR. BRADLEY: Yes.

9 THE COURT: Mr. Bronson.

10 MR. BRADLEY: Yes.

11 THE COURT: Okay.

12 MR. JACOBS: Okay. The witness I was asking to  
13 confer with is not -- is a civilian.

14 THE COURT: I'm sorry?

15 MR. JACOBS: This witness on Paragraph 1 is a  
16 civilian. This is a witness that has been in the courtroom  
17 throughout the course of the trial.

18 MR. BRADLEY: Your Honor, he just said there was no  
19 other witness than Purcell Bronson.

20 THE COURT: Who is the other witness?

21 MR. JACOBS: He asked me did this paragraph pertain  
22 to Mr. Bronson. No, it doesn't pertain to Mr. Bronson.

23 THE COURT: The Court understood it that you, that  
24 the only witness that you were referring to in this motion was  
25 Mr. Bronson. Who is this other person?

1 MR. JACOBS: This is a person that is a civilian.

2 THE COURT: Who is that person?

3 MR. JACOBS: This is a witness who has documented  
4 and put the defendants in the case -- Jeffrey Beard  
5 specifically -- on notice of claims concerning things that  
6 were happening at SCI Pittsburgh in the --

7 THE COURT: When I mean, I have no idea who the  
8 person is. I'll permit Mr. Bronson, but I have no idea who  
9 this other person is and why he would have any evidence.

10 MR. BRADLEY: Again, that seems to be going to his  
11 case in chief.

12 MR. JACOBS: No, I'm not -- Your Honor, I'm not  
13 asking you to permit his testimony. I'm asking you to allow  
14 my to confer with him, to understand the extent and whether  
15 he's even needed here or not. He's been coming to this trial  
16 under the impression that he may be needed as a rebuttal  
17 witness.

18 THE COURT: Is there any reason why that person  
19 can't communicate with the defendant? Is there any limitation  
20 on somebody sending him information?

21 MR. BRADLEY: I mean, whatever. The normal rules  
22 would apply. He can correspond with whoever he wants to  
23 correspond with.

24 THE COURT: You can correspond. I mean, I don't  
25 know how to help you here, Mr. Jacobs. If this person has

1 been coming here, and you can correspond with the person,  
2 what -- there's nothing the Court can do. Now, under the  
3 circumstances, you can send him a letter and ask what he has,  
4 and he can get back to you.

5 MR. JACOBS: Well, the first issue is that I came  
6 here and I didn't have -- only property I had was legal  
7 property here, and I was never issued any envelopes.  
8 Envelopes are issued on a monthly basis, and by the time I  
9 came to this prison, envelopes had already been issued. So, I  
10 was not issued envelopes. So, I don't have any. That's why I  
11 haven't been sending any documents to the Court. I've just  
12 been bringing them, instead of sending them.

13 THE COURT: Will you make sure Mr. Jacobs gets  
14 envelopes? I don't know what envelopes, what the nature of  
15 those envelopes are.

16 How many do you need?

17 MR. JACOBS: Well at least one to write to him.

18 THE COURT: Okay. Why don't you get him three  
19 envelopes. Then, just in case there's any other motion you  
20 want to file, you'll have it available. Okay?

21 MR. JACOBS: Okay.

22 THE COURT: All right. Okay. So, the Court is  
23 going to deny the request to confer and secure, in light of  
24 our discussion, but is asking and requesting the Department of  
25 Corrections to provide you with the envelopes, so that you can

1 send whatever correspondence you would like to that individual  
2 who is unnamed.

3                   And then, Mr. Bronson will be able to appear as a  
4 rebuttal witness, but just for the very limited purpose that  
5 has been set forth by the Court on the record.

6                   MR. BRADLEY: Your Honor, just for clarification,  
7 that's the only rebuttal witness, not Alton Brown.

8                   THE COURT: We have Mr. Bronson. You don't need  
9 Alton Brown?

10                  MR. WILLIG: So, we can send Mr. Bronson back?

11                  THE COURT: So, he'll be going back to the jail that  
12 he's regularly incarcerated at. Okay. So, that takes care of  
13 that motion.

14                  Now, there's the motion for immediate relief in the  
15 remaining portion of 6.3.1. You want to just tell the Court  
16 exactly what it is you need to see?

17                  MR. JACOBS: There's been testimony about how  
18 confiscated material is supposed to be handled.

19                  THE COURT: Yes. They said it was to be sent to the  
20 Security.

21                  MR. JACOBS: Well, there's some gray areas about the  
22 procedures for how this stuff is supposed to be handled. At  
23 one point Mr. Lynch said that the documents are supposed to be  
24 sent to Security, but then, he said that sometimes they hold  
25 them on the unit and put them in a box in a secure area.

1                   In this case, the defendants are implying that they  
2 sent these materials to Security, but Security is saying that  
3 these documents were never received. So, there's a gray area  
4 in between as to what is exactly supposed to be done with  
5 confiscated material.

6                   THE COURT: What I heard from the defense witnesses  
7 was that there's supposed to be a record kept, and that there  
8 was no record here.

9                   MR. JACOBS: Once the documents are received in the  
10 Security Department.

11                   THE COURT: Right, right, which would let the, the  
12 jury infer, if it wanted to, that they were never sent.

13                   But what else do you need? I mean, they have  
14 already testified about, if they were received they would have  
15 been documented.

16                   MR. JACOBS: For example, Your Honor, suppose  
17 there's a procedure as to the specific handling of these  
18 documents. For example, once these documents are confiscated,  
19 what are they supposed to do with them? Are they supposed to  
20 hand deliver them, or is there any type procedure for the  
21 handling? There is a procedure for the handling of  
22 confiscated material. And I mean, I think that's really  
23 important to cross examination, because they are saying they  
24 did it one way, when the procedures might dictate that they  
25 are supposed to handle them another way. And they are trying

1 to use that as a scapegoat, to say that those documents never  
2 made it to the Security Department.

3 THE COURT: I'm sorry, I'm not recalling any real  
4 specific rule that you would be trying to refer to.

5 MR. JACOBS: The handling of -- the handling of  
6 contraband before it's received by the Security Department.

7 MR. JACOBS: I understand the procedures once he  
8 received it and what is supposed to be done after he receives  
9 it. But how are the defendants supposed to handle it once  
10 they confiscate it and label it "contraband"?

11 I'll look through them again, but did I not see  
12 anything in there related to that issue. They said they have  
13 a policy on it.

14 THE COURT: One moment. The section that you  
15 referred the Court to doesn't really have anything that  
16 specifically deals with what you're -- what information you're  
17 seeking.

18 I think you've already received all this evidence  
19 control. I'm not aware of any other provision, so that I can  
20 review. That dealt with the level of detail.

21 MR. BRADLEY: I know we provided the documents for  
22 the Court's review.

23 THE COURT: And I ordered these to be turned over,  
24 and this is Exhibit 31.

25 MR. JACOBS: I received evidence control.

1                   THE COURT: Yes. But there's nothing else that  
2 deals with confiscated property, that I'm aware of. In the  
3 other, in the --

4                   MR. JACOBS: Section 20.

5                   THE COURT: Section 20, it just deals with inmate  
6 property; what happens when your property is received, when  
7 you're transferred. Legal property, excess property, excess  
8 legal property, temporary absence, furlough, but nothing to  
9 deal with confiscated property.

10                  I'm not aware of anything else in there that would be  
11 relevant to this, to your inquiry, having reviewed in camera  
12 that policy, Section 20.

13                  There's nothing that deals with what you're seeking,  
14 Mr. Jacobs.

15                  And then, there was something here about Mr. Edwards  
16 not being able to put in evidence, his own records about his  
17 appeal, about his grievances?

18                  MR. JACOBS: Against the defendants in the case, as  
19 well as --

20                  THE COURT: Yes.

21                  MR. JACOBS: -- as well as notice of the practices  
22 involved in this case.

23                  THE COURT: And I did permit him to testify about  
24 all of that, but I don't know how that would be direct  
25 evidence in this case.

1                   MR. BRADLEY: I agree, Your Honor. And he was given  
2 considerable latitude in questioning Mr. Edwards, and he  
3 elicited testimony on a wide variety of topics, and if we're  
4 going to get all of those, I assume, grievances, misconducts,  
5 or whatever, then, we're going to have to go through and  
6 determine whether they were founded or unfounded, or whether  
7 they were legitimate collateral issues.

8                   THE COURT: Whatever probative value they would have  
9 would be outweighed by the possible confusion for the jury,  
10 the need to deal with his other his claims that he was raising  
11 there, the resolution of those claims, which are not germane.  
12 I think the importance of his testimony to your case was that  
13 he had been filing grievances against these defendants.

14                   MR. JACOBS: And also that --

15                   THE COURT: And nobody refuted that, as I heard it.

16                   MR. JACOBS: And also, that he put, that he  
17 exhausted -- he also testified that he exhausted all appeals  
18 to Central Office, and he filed -- he put Defendant Beard on  
19 notice of the type of claims that are in this case.

20                   THE COURT: Right. And he testified to that. So,  
21 you'll be able to review that with the jury in your closing.

22                   Was there anything else in that motion?

23                   MR. BRADLEY: I believe that was it.

24                   THE COURT: Okay. Now, is there anything else  
25 outstanding, other than the matters relating to the final

1 charge?

2 MR. BRADLEY: I believe that's all that's left, as  
3 long as you're including the 8, 14, and as well as the  
4 Rule 50.

5 THE COURT: Yes, that's the final charge.

6 MR. BRADLEY: Right. To my understanding, those  
7 are the other issues remaining.

8 THE COURT: Okay. Okay, Mr. Jacobs. And then,  
9 you'll take care of, Mr. Bradley, of getting the letter that  
10 was attached to the one motion to Mr. Bronson?

11 MR. BRADLEY: Yes.

12 THE COURT: And you'll have him available. We can  
13 take -- I don't know when you, if you want to specially  
14 schedule him. How much longer do you think your case will  
15 take?

16 MR. BRADLEY: I don't think it will take -- my  
17 direct won't take much longer. William Stickman will probably  
18 be the longest witness, but it will depend on cross of the  
19 other -- well, actually, other than Mr. Jacobs, Miss Scire is  
20 the only other witness.

21 THE COURT: Should we plan to have Mr. Bronson,  
22 then, Tuesday morning; is that safe?

23 MR. BRADLEY: I was thinking Monday afternoon.

24 THE COURT: I'll leave that you.

25 Somebody needs to advise him that the letter that

1 Mr. Jacobs is sending refers to Friday, but he should be  
2 advised that it will be probably no earlier than Monday  
3 afternoon, and possibly on Tuesday. Okay? Somebody will  
4 advise him of that.

5 Are you okay with that, Mr. Jacobs?

6 MR. JACOBS: Yes.

7 THE COURT: Okay. Then, that's what we'll do. And  
8 then, I would like, I would like to review the final  
9 instructions, hopefully Monday afternoon when the witnesses  
10 are concluded. And then. We can give the final charge to the  
11 jury. And I have a draft of the verdict slip, and that will  
12 depend on which claims are in or out. And we'll have that for  
13 you -- you already gave it to them? Okay. So that, I think,  
14 is reflective of just the claims that are in the final charge  
15 presently/but it's the format that I need you to consider, in  
16 terms of whether I've addressed the elements of damages.  
17 Okay?

18 MR. BRADLEY: Yes, Your Honor.

19 THE COURT: Anything else?

20 MR. BRADLEY: Not from the defendants.

21 THE COURT: Okay.

22 MR. JACOBS: In consideration of plaintiff's reply  
23 to defendant's brief on a Fourteenth Amendment State law  
24 claim.

25 MR. BRADLEY: Yes.

1 MR. JACOBS: I think I had made reference to a  
2 ruling this Court had made in regards to sovereign immunity.

3 THE COURT: Yes.

4 MR. JACOBS: I think I made reference to it, but I  
5 didn't have the actual document at the time.

6 THE COURT: Do you have it now?

7 MR. JACOBS: I do have it, but it's the only one I  
8 got.

9 THE COURT: Okay. We'll make a copy of it. Could  
10 we make a copy of that?

11 Okay. You'll be able to get it off the docket.  
12 What number is it?

13 MR. JACOBS: It's from 04-1941, Document 48.

14 MR. BRADLEY: I don't need a copy, Your Honor.

15 THE COURT: Okay. We'll write down the number and  
16 we'll make it available to him.

17 Do you have the number, Mr. Fergus?

18 MATTHEW FERGUS, Law Clerk: Yes.

19 THE COURT: Okay. Thank you all. This hearing is  
20 adjourned.

21 We'll see you Monday morning.

22 (Whereupon, court adjourned at 5:20 p.m.)

23 \* \* \* \* \*

24

25

## I N D E X

2	DEFENDANT	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
3	Gregory Giddens					
4	By Mr. Bradley				31	
5	By Mr. Jacobs (cross continues)		2		42	
6	Frank Chirico					36
7	By Mr. Bradley		46		90	
8	By Mr. Jacobs			56		80
9	Allen Lynch					
10	By Mr. Bradley		95		132	
11	By Mr. Jacobs			107		142
12	Thomas E. McConnell					138
13	By Mr. Bradley		144		183	
14	By Mr. Jacobs			150		186
						184
						186

\* \* \* \*

17 I certify by my original signature herein  
18 that the forgoing is a correct transcript from the record of  
19 proceedings in the above-entitled matter.

s/Virginia S. Pease  
Official Court Reporter